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# federal register

Wednesday
May 17, 1989

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# federal register

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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.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

### WASHINGTON, DC

**WHEN:** May 23; 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

### ST. LOUIS, MO

**WHEN:** May 23; at 9:00 a.m.
**WHERE:** Room 1612,
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**RESERVATIONS:** Call the Federal Information Center,
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**Separate Parts In This Issue**



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

## CFR PARTS AFFECTED IN THIS ISSUE

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

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# Presidential Documents

Title 3—

The President

Proclamation 5978 of May 12, 1989

## To Implement in Terms of the Harmonized Tariff Schedule of the United States the Nairobi Protocol to the Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials

By the President of the United States of America

A Proclamation

1. Section 1121 of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (Public Law 100–418; 102 Stat. 1138) provides for the implementation by the United States of the Protocol (S. Treaty Doc. 97–2; hereinafter referred to as the Nairobi Protocol) to the Agreement on the Importation of Educational, Scientific, and Cultural Materials (17 UST (pt. 2) 1835; hereinafter referred to as the Florence Agreement). Accordingly, the Secretary of State is authorized to deposit on behalf of the United States the U.S. instrument of ratification of the Nairobi Protocol according to the procedures set forth therein. The Nairobi Protocol thereby enters into force with respect to the United States on the 15th day after such instrument is deposited.

2. Pursuant to section 1121 of the 1988 Act, the tariff provisions necessary to give effect to the Nairobi Protocol were enacted in terms of the provisions of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). However, because of the repeal of the TSUS and the enactment of the Harmonized Tariff Schedule of the United States (HTS), effective on January 1, 1989, and pursuant to section 1204 of the 1988 Act (19 U.S.C. 3004), it is necessary to provide for the equivalent tariff treatment in the HTS of the articles covered by section 1121.

3. Section 1204(b) of the 1988 Act directs the President to proclaim such modifications to the HTS as are necessary or appropriate to implement the applicable provisions of statutes enacted, executive actions taken, and final judicial decisions rendered after January 1, 1988, and before the effective date of the HTS.

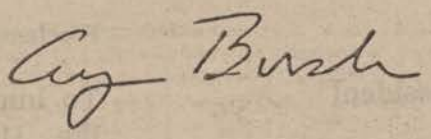
4. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483), as amended, authorized the President to embody in the HTS the substance of the provisions of that act, of other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and laws of the United States, including but not limited to sections 1121 and 1204 of the 1988 Act and section 604 of the Trade Act of 1974, do proclaim that:

(1) The HTS is modified as provided in the annex to this proclamation.

(2) The amendments to the HTS made by this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after May 30, 1989.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of May, 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.



Billing code 3195-01-M

ANNEX

MODIFICATIONS TO THE HARMONIZED
TARIFF SCHEDULE OF THE UNITED STATES

Notes:

1. Bracketed matter is included to assist in the understanding of the proclaimed modifications.

2. The following supersedes matter now in the Harmonized Tariff Schedule of the United States (HTS). The subheadings and superior descriptions are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

1. Subheading 3705.20.00 is superseded by:

| | | | | |
|---|---|---|---|---|
| | [Photographic . . .] | | | |
| "3705.20 | Microfilms: | | | |
| 3705.20.10 | Of articles of subheading 4901.91.00, 4901.99.00, 4902.10.00, 4902.90, 4903.00.00, 4906.00.00, 4911.10.00 or 9503.60.10..... | Free | | Free |
| 3705.20.50 | Other..... | Free | | 25%" |

2. Subheading 9503.60.00 is superseded by:

| | | | | |
|---|---|---|---|---|
| | [Other toys . . .] | | | |
| "9503.60 | Puzzles and parts and accessories thereof: | | | |
| 9503.60.10 | Crossword puzzle books.... | Free | | Free |
| 9503.60.20 | Other..... | 6.8% | Free (A,E,IL) | 70%" |

3. Subchapter VII of chapter 98 is modified by striking out subheadings 9807.00.10, 9807.00.20 and 9807.00.30.

4. Subheading 9808.00.10 is modified by inserting in the article description the phrase "; official government publications in the form of microfilm, microfiches, or similar film media" immediately after "not developed".

5. Subheading 9809.00.10 is modified by inserting in the article description the phrase ", whether or not in the form of microfilm, microfiches, or similar film media" immediately after "documents".

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6. Subchapter X of chapter 98 is modified by inserting in numerical sequence the following new subheading, with the article description at the same level of indentation as that of subheading 9810.00.65:

| | | | | |
|---|---|---|---|---|
| | [Articles . . .] | | | |
| "9810.00.67 | Tools specially designed to be used for the maintenance, checking, gauging or repair of instruments or apparatus admitted under subheading 9810.00.60..... | Free | | Free" |

7. U.S. Note 1 to subchapter XVII of chapter 98 is modified to read as follows:

"1. (a) No article shall be exempted from duty under subheading 9817.00.40 unless either--

(i) a Federal agency (or agencies) designated by the President determines that such article is visual or auditory material of an educational, scientific or cultural character within the meaning of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character (17 UST (pt. 2) 1578; Beirut Agreement), or

(ii) such article--

(A) is imported by, or certified by the importer to be for the use of, any public or private institution or association approved as educational, scientific, or cultural by a Federal agency or agencies designated by the President for the purpose of duty-free admission pursuant to the Nairobi Protocol to the Florence Agreement, and

(B) is certified by the importer to be visual or auditory material of an educational, scientific, or cultural character or to have been produced by the United Nations or any of its specialized agencies. For purposes of subparagraph (i), whenever the President determines that there is, or may be, profitmaking exhibition or use of articles described in subheading 9817.00.40 which interferes significantly (or threatens to interfere significantly) with domestic production of similar articles, he may prescribe regulations imposing restrictions on the entry under one of the above-cited subheadings of such foreign articles to insure that

they will be exhibited or used only for nonprofitmaking purposes.

(b) For purposes of subheadings 9817.00.42 through 9817.00.48, inclusive, no article shall be exempted from duty unless it meets the criteria set forth in subparagraphs (a)(ii)(A) and (B) of this note."

8. Subchapter XVII of chapter 98 is modified by inserting in numerical sequence the following new U.S. note:

"4. (a) For purposes of subheadings 9817.00.92, 9817.00.94 and 9817.00.96, the term "blind or other physically or mentally handicapped persons" includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(b) Subheadings 9817.00.92, 9817.00.94 and 9817.00.96 do not cover--

(i) articles for acute or transient disability;

(ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled;

(iii) therapeutic and diagnostic articles; or

(iv) medicine or drugs."

9. Subheading 9817.00.40 is modified by inserting "(except toy models)" after "models", and by striking out "U.S. note 1" and inserting in lieu thereof "U.S. note 1(a)".

10. Subchapter XVII of chapter 98 is further modified by inserting in numerical sequence the following new subheadings and superior descriptions:

| | | | | |
|---|---|---|---|---|
| | "Articles determined to be visual or auditory materials in accordance with U.S. note 1 of this subchapter: | | | |
| 9817.00.42 | Holograms for laser projection; microfilm, microfiches and similar articles..... | Free | | Free |
| 9817.00.44 | Motion-picture films in any form on which pictures, or sound and pictures, have been recorded, whether or not developed..... | Free | | Free |

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| | | | | |
|---|---|---|---|---|
| | [Articles . . .:(con.)] | | | |
| 9817.00.46 | Sound recordings, combination sound and visual recordings, and magnetic recordings; video discs, video tapes and similar articles..... | Free | | Free |
| 9817.00.48 | Patterns and wall charts; globes; mock-ups or visualizations of abstract concepts such as molecular structures or mathematical formulae; materials for programmed instruction; and kits containing printed materials and audio materials and visual materials or any combination of two or more of the foregoing..... | Free | | Free |
| | Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons: | | | |
| | Articles for the blind: | | | |
| 9817.00.92 | Books, music and pamphlets, in raised print, used exclusively by or for them..... | Free | | Free |
| 9817.00.94 | Braille tablets, cubarithms, and special apparatus, machines, presses, and types for their use or benefit exclusively..... | Free | | Free |
| 9817.00.96 | Other..... | Free | | Free" |

[FR Doc. 89-12036
Filed 5-16-89; 10:22 am]
Billing code 3195-01-C

# Presidential Documents

**Proclamation 5979 of May 15, 1989**

## Trauma Awareness Month, 1989

**By the President of the United States of America**

**A Proclamation**

Every American is a potential trauma victim. By any measure—whether we consider its economic costs or the unfathomable price paid in lost and broken lives—traumatic injury constitutes a major public health problem. Each year, more than 150,000 Americans lose their lives to traumatic injuries; many others are severely or permanently disabled by them. Traumatic injury is the leading cause of death of people under 40 years of age.

Deaths due to traumatic injury claim the hope and promise of more young lives than cancer and heart disease combined. The elderly, too, are at high risk from hip fracture and other types of injury. In addition to the personal tragedy to individuals, traumatic injuries constitute one of our Nation's most expensive public health problems.

Traumatic injury at any age is tragic and unnecessary. Most of these tragedies are preventable. We need to educate all Americans, beginning with the young people in our Nation's schools, about traumatic injuries and how they occur. We need to make our citizens aware of the ways to prevent dangerous situations that can lead to traumatic injury. All Americans should also learn about the actions that can be taken to reduce the severity of these injuries through improved emergency medical services, trauma care, and rehabilitation.

By combining the efforts of individual citizens, health care professionals, researchers, business and industry, voluntary agencies, and government officials, the toll of traumatic injury and subsequent losses can be reduced.

To enhance public awareness of traumatic injury, the Congress, by Senate Joint Resolution 68, has designated the month of May 1989 to be "National Trauma Awareness Month" and has authorized and 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 May 1989 as "National Trauma Awareness Month." I urge the people of the United States, their government agencies, health care providers, and schools to take an active part in preventing traumatic injuries by learning more about the traumatic injury problem. I also urge all Americans to support private and public efforts to prevent traumatic injuries and provide high-quality treatment for those that do occur. We can do this by supporting research into new ways to prevent and treat traumatic injuries and by helping the victims of traumatic injuries to recover from the physical, emotional, and financial burdens they inflict.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, 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. 89-12037
Filed 5-16-89; 10:23 am]
Billing code 3195-01-M

# Rules and Regulations

Federal Register
Vol. 54, No. 94
Wednesday, May 17, 1989



## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 401

**[Amdt. No. 38; Doc. No. 6089S]**

### General Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, to include provisions for a Late Planting Agreement Option (7 CFR 401.107) on certain crops in the Late Planting Agreement Option Regulations. The intended effect of this rule is to include these crops among those listed in the Late Planting Agreement Option as being eligible for that option.

**EFFECTIVE DATE:** June 16, 1989.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) 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; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, July 30, 1987, FCIC published a final rule in the **Federal Register** at 52 FR 28443, issuing a new Part 401 to 7 CFR, Title IV. Included in this rule is 7 CFR 401.107, titled the Late Planting Agreement Option, published at 52 FR 28457.

The Late Planting Agreement Option becomes effective when elected by producers on the crop insurance endorsements listed under 7 CFR 401.107 as eligible for the option.

FCIC studies indicated that the crops listed below would benefit from the option. The use of the option benefits the insured by allowing coverage to be obtained after the normal crop planting period.

On Thursday, August 4, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 29340, proposing to include provisions for a Late Planting Agreement Option (7 CFR 401.107) on the following additional crop insurance endorsements in the Late Planting Agreement Option Regulations:

*7 CFR*

Sec.
401.116 Flaxseed Endorsement.
401.123 Safflower Seed Endorsement.
401.124 Sunflower Seed Endorsement.
401.109 Hybrid Sorghum Endorsement.
401.118 Canning and Processing Bean Endorsement.

Upon further review of the rule, FCIC determined that certain crops eligible for Late Planting Agreement under the provisions of 7 CFR Part 400, Subpart A, which have been recently converted to endorsements under the General Crop Insurance Policy, were inadvertently omitted from the rule published at 53 FR 29340.

Accordingly, on Monday, January 23, 1989, FCIC published a notice of additional proposed rulemaking in the **Federal Register** at 53 FR 3050, to add the following crop insurance endorsements to the rule published at 53 FR 29340:

*7 CFR*

Sec.
401.111 Corn (Grain) Endorsement.
401.113 Grain Sorghum Endorsement.
401.114 Canning and Processing Tomato Endorsement.
401.117 Soybean Endorsement.
401.118 Canning and Processing Tomato Endorsement.
401.119 Cotton Endorsement.
401.120 Rice Endorsement.
401.126 Onion Endorsement.

The public was given 30 days in which to submit written comments, data, and opinions on the notice of additional proposed rulemaking published at 53 FR 29340, but none were received.

In addition, the statement of availability of the Late Planting Agreement Option, found at Paragraph (e) of 7 CFR 401.107 in the proposed rule (53 FR 29340) should be clarified to more clearly define the limitations on the availability of the option. Presently, the paragraph states that the option will be available in all counties in which the Corporation offers insurance on these crops unless prohibited by the actuarial table in certain counties on fall-planted crops.

Other instruments which may also indicate limitations include the crop endorsement or any option to the endorsement. Therefore, FCIC clarifies the availability of the Late Planting Agreement Option by amending § 401.107(e) for this purpose.

Therefore, FCIC herewith adopts as a final rule the regulations published at 53 FR 29340.

**List of Subjects in 7 CFR Part 401**

General crop insurance regulations.

**Final Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, in the following instances:

**PART 401—[AMENDED]**

1. The authority citation for 7 CFR Part 401 continues to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

2. 7 CFR 401.107—Late Planting Agreement Option, Paragraph (e) is revised to read as follows:

**§ 401.107 Late planting agreement option.**

* * * * *

(e) *Applicability to crops insured.* The provisions of this section will be applicable to the provisions for insuring crops under the following FCIC endorsements:

401.101 Wheat Endorsement.
401.103 Barley Endorsement.
401.105 Oat Endorsement.
401.106 Rye Endorsement.
401.109 Hybrid Sorghum Seed Endorsement.
401.111 Corn Endorsement.
401.113 Grain Sorghum Endorsement.
401.114 Canning and Processing Tomato Endorsement.
401.116 Flaxseed Endorsement.
401.117 Soybean Endorsement.
401.118 Canning and Processing Bean Endorsement.
401.119 Cotton Endorsement.
401.120 Rice Endorsement.
401.123 Safflower Seed Endorsement.
401.124 Sunflower Seed Endorsement.
401.126 Onion Endorsement.

The Late Planting Agreement Option will be available in all counties in which the Corporation offers insurance on these crops unless limited by the actuarial table, crop endorsement, or crop endorsement option.

* * * * *

Done in Washington, DC, on May 10, 1989.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 89-11785 Filed 5-16-89; 8:45 am]

**BILLING CODE 3410-08-M**

## FEDERAL TRADE COMMISSION

**16 CFR Part 305**

**RIN 3084-AA26**

### Ranges of Comparability Using Energy Cost and Consumption Information for Labeling and Advertising of Clothes Washers

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission announces that the present ranges of comparability for clothes washers will remain in effect until new ranges are published.

Under the rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. These ranges show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range will be applicable until new ranges are published. The ranges of estimated annual costs of operation for clothes washers have not changed by as much as 15% since the last publication. Therefore, the ranges published on May 24, 1988 remain in effect until new ranges are published.

**EFFECTIVE DATE:** May 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** James Mills, Attorney, 202-326-3035, or Ruth Sacks, Investigator, 202-326-3033, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA)[1] requires the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. Clothes washers are included as one of the categories. Before these labeling requirements may be prescribed, the statute requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [2] covering seven of the thirteen appliance categories, including clothes washers. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all dishwashers presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a clothes washer is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[3] Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under Section 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for clothes washers have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the last publication of the ranges on May 24, 1988.[4]

In consideration of the foregoing, the present ranges for clothes washers will remain in effect until the Commission publishes new ranges for these products.

**List of Subjects in 16 CFR Part 305**

Advertising, Energy conservation, Household appliances, Labeling,

[1] Pub. L. 94-163, 89 Stat. 871 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR Part 305.

[3] Reports for clothes washers are due by March 1.

[4] 53 FR 18551.

Reporting and recordkeeping requirements.

The authority citation for Part 305 continues to read as follows:

**Authority:** Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100–357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 89–11808 Filed 5–16–89; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Parts 154 and 385

**[Order No. 493–C]**

## Natural Gas Data Collection System

Issued May 11, 1989.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its regulations to require that a natural gas company submit only Volumes 1 and 1A of its tariff, rather than its entire tariff, on an electronic medium. The Commission's regulations currently require the company to submit its entire tariff on an electronic medium. The Commission believes that the costs and burdens to both the natural gas industry and the Commission in requiring that the entire tariff be filed on an electronic medium far exceed any benefits to be realized from requiring such filing.

**EFFECTIVE DATE:** This final rule is effective May 11, 1989.

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

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

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

### I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations to require that a natural gas company submit only Volumes 1 and 1A of its tariff, rather than its entire tariff, on an electronic medium. The Commission's regulations currently require the company to submit its entire tariff on an electronic medium. The Commission believes that the costs and burdens to both the natural gas industry and the Commission in requiring that the entire tariff be filed on an electronic medium far exceed any benefits to be realized from requiring such filing.

### II. Background and Discussion

The Commission amended its regulations in Order No. 493 to require that natural gas companies submit certain forms and rate, tariff, and certificate filings on an electronic medium.[1] The Commission subsequently extended the implementation date for electronic data submission of tariff filings to October 31, 1989. As of that date, all tariff filings must be submitted on an electronic medium.

A natural gas company's tariffs may consist of several volumes.[2] The rate schedules, terms and conditions for generally available services are contained in Volumes 1 and 1A. These volumes normally are approximately 200 pages each. They are frequently revised by natural gas companies and frequently referenced by Commission staff.

A natural gas company's special rate schedules are included in a separate volume usually designated as Volume 2.[3] Volume 2 for a major pipeline may contain as many as 6,000 to 8,000 pages. (The ten largest natural gas companies have a collective total of more than 30,000 pages in Volume 2.) Volume 2 is revised infrequently, and most of those revisions are cancellations of the special rate schedules. Commission staff references Volume 2 infrequently, and then only to verify cancellations and other revisions.

Pipelines filing tariffs on an electronic medium pursuant to Order No. 493 will use a text format.[4] The advantages of filing tariffs in this manner include: (1) Stricter control over the official tariff (currently the one official paper copy is used by Commission staff and the public); and (2) ease of making copies for Commission staff or public use. These advantages can be achieved relatively inexpensively for Volumes 1 and 1A. However, we now conclude otherwise with respect to Volume 2.[5]

The natural gas industry's costs for converting Volume 2 tariffs to an electronic medium undoubtedly would be high. Many of the documents in Volume 2 predate word processors and exist only on paper. These documents must be retyped using word processing software and verified for accuracy. This is an expensive manual process. Additionally, some pages may need to be reformatted in order to comply with data processing limitations. The filing

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[1] 53 FR 15023 (Apr. 27, 1988), III FERC Stats. & Regs. ¶ 30808 (Apr. 5, 1988); 53 FR 16058 (May 5, 1988), III FERC Stats. & Regs. ¶ 30813 (May 2, 1988); *order on reh'g*, 53 FR 30027 (Aug. 10, 1988), III FERC Stats. & Regs. ¶ 30826 (Aug. 1, 1988); *order on reconsideration*, 53 FR 49652 (Dec. 9, 1988), III FERC Stats. & Regs. ¶ 30840 (Nov. 30, 1988).

[2] A tariff is a "compilation, in book form of all of the effective rate schedules of a particular natural gas company and a copy of each service agreement." *See* 18 CFR 154.14 (1989).

[3] Special rate schedules include agreements for special operating arrangements for the exchange and transportation of natural gas and agreements for the sale of natural gas at charges computed on a cost-formula basis and not stated in cents or in dollars and cents per unit. *See* 18 CFR 154.52 (1989). A natural gas company may have one or more volumes of special rate schedules. These volumes are numbered consecutively beginning with the number 2. The term "Volume 2" is used collectively in this rule to refer to all volumes containing special rate schedules.

[4] This means that tariff sheets on an electronic medium can be read or printed and, using a computer system, they can be moved through the various stages from "proposed" to "effective". But there is no automated capability to otherwise analyze a tariff sheet or to make comparisons between rate schedules.

[5] In industry comments made during two implementation conferences and in a subsequent review conducted by Commission staff, questions were raised about the necessity of including a natural gas company's entire tariff in the Order No. 493 electronic data submission requirement.

format for electronic media also requires the addition of four header records to each sheet. These header records contain the information normally printed in the margin of the tariff sheet as well as information for processing and printing each sheet. Finally, there are additional requirements related to service and protest exposure that may add significantly to the burden of filing Volume 2 on an electronic medium.

The Commission's costs for processing these electronically filed records are also high. Commission staff would have to manually verify that every word on every tariff sheet refiled on an electronic medium agrees with the official file copy. The time and cost for completing this review process would be enormous due to the number of pages involved. Because of the infrequent use of Volume 2 by the Commission, the benefit to be realized from this exercise appears to be minimal and the cost unjustified.

The Commission, therefore, concludes that it will not require electronic data submission of a natural gas company's entire tariff. Rather, the Commission will require electronic data submission of only the tariff sheets contained in a natural gas company's Volumes 1 and 1A. The Commission is amending its regulations to limit the submittal of a natural gas company's tariff to only Volumes 1 and 1A tariff sheets.

### III. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[6] An agency is not required to make an RFA analysis if it certifies that a rule will not have "a significant economic impact on a substantial number of small entities." [7]

Most companies required to comply with this final rule are major natural gas pipelines and thus do not fall within the RFA's definition of small entity. The Commission certifies, therefore, that this final rule will not have a significant economic impact on a substantial number of small entities.

### IV. National Environmental Policy Act Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[8] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[9] This rule involves the review of natural gas rate filings and the establishment of rates for transportation and sale of natural gas, and is therefore categorically exempt.[10] Thus, no environmental assessment or environmental impact statement is necessary for the requirements of this rule.

### V. Paperwork Reduction Act Statement

The Paperwork Reduction Act [11] and the Office of Management and Budget's (OMB) [12] regulations require that OMB approve certain information collection requirements imposed by agency rules. This final rule reduces the information collection requirements in Part 154 because they are unduly burdensome and costly. The Commission is notifying the Office of Management and Budget that this information collection requirement has been reduced.

### VI. Administrative Findings and Effective Date

The Administrative Procedure Act (APA) exempts certain rules from notice and comment requirements.[13] Natural gas companies must begin to convert their Volume 2 tariffs to an electronic medium now in order to comply with the October 31, 1989, implementation date. Because this will be both costly and unduly burdensome, the Commission believes notice and comment is impractical and contrary to the public interest.

The Commission also notes that it has already received considerable comment on its proposed electronic data filing requirements in this docket. Although Order No. 493 has now become final, and is not subject to rehearing, the date of implementation for the portion of the rule adopted therein that the Commission is amending here has not yet occurred. During the course of publicly noticed technical conferences conducted by the Commission staff to discuss implementation of the rule, additional comment was received as to the comparative benefits and burdens.

Thus, no useful purpose would be served by inviting further comment on this subject, as the issues have been fully ventilated and little more could be said. The choice before the Commission is whether to proceed with the implementation of the requirement for electronic filing of the Volume 2 tariff material or, on reconsideration *sua sponte*, whether to amend the final rule so as to delete that requirement before it takes effect. Therefore, in light of all of the above, the Commission finds that there is good cause to issue this rule without notice and comment.

The APA also provides that in certain limited circumstances a federal agency can, for good cause, issue a rule effective upon issuance.[14] The Commission finds that this rule relieves natural gas companies from certain filing requirements that are unduly burdensome and costly. This rule, therefore, is effective May 11, 1989.

### List of Subjects

*18 CFR Part 154*

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

*18 CFR Part 385*

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

In consideration of the foregoing, the Commission amends Parts 154 and 385, Title 18, Chapter I of the Code of Federal Regulations as set forth below.

By the Commission.

**Lois D. Cashell,**

*Secretary.*

## PART 154—RATE SCHEDULES AND TARIFFS

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

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

2. In § 154.1, paragraphs (b) and (c) are revised to read as follows:

**§ 154.1 Application; obligation to file.**

* * * * *

(b) On or after October 31, 1989, any change to a tariff contained in Volumes

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[6] 5 U.S.C. 601–612 (1982).

[7] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A small business is defined by reference to section 3 of the Small Business Act, as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1982).

[8] Order No. 486, 52 FR 47,897 (Dec. 17, 1987), III FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987) codified at 18 CFR Part 380.

[9] 18 CFR 380.4 (1989).

[10] 18 CFR 380.4(a)(25) (1989).

[11] 44 U.S.C. 3501–3520 (1982).

[12] 5 CFR 1320.13 (1989).

[13] 5 U.S.C. 553(b)(3) (1982).

[14] 5 U.S.C. 553(d)(3) (1982).

1 and 1A must be submitted on an electronic medium in conformance with the requirements of § 385.2011 of this chapter.

(c) On or after October 31, 1989, any natural gas company submitting a general rate proceeding pursuant to section 4 of the Natural Gas Act and § 154.63 or a restatement of the base tariff rate pursuant to § 154.303(a) must incorporate as part of this filing a resubmittal of Volumes 1 and 1A of the company's tariff, except executed service agreements, on an electronic medium pursuant to § 385.2011 of this chapter.

3. In § 154.31, paragraph (b) is revised to read as follows:

**§ 154.31 Application.**

* * * * *

(b) Volumes 1 and 1A tariff sheets filed on or after October 31, 1989, on an electronic medium must conform to the format required in §§ 154.32 through 154.36 and §§ 154.38 through 154.41.

4. Section 154.61 is revised to read as follows:

**§ 154.61 Application.**

Sections 154.62 through 154.65, except as otherwise specifically provided in this part, apply to all tariffs, executed service agreements, or parts of service agreements, which are filed after December 1, 1948. On or after the October 31, 1989, Volumes 1 and 1A tariffs filed pursuant to §§ 154.62, 154.63 (except § 154.63(b)) and 154.303(e) must be filed on an electronic medium as prescribed in § 385.2011 of this chapter.

## PART 385—RULES OF PRACTICE AND PROCEDURE

5. The authority citation for Part 385 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 717–717w (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

6. In § 385.2011, paragraphs (b)(1) and (b)(2) are revised to read as follows:

**§ 385.2011 Procedures for filing on an electronic medium.**

* * * * *

(b) * * *

(1) Volumes 1 and 1A filings pursuant to §§ 154.63 and 154.303(e) of this chapter.

(2) Volumes 1 and 1A tariff sheets filed pursuant to the requirements in Parts 154, 157 and 284 of this chapter.

* * * * *

[FR Doc. 89–11760 Filed 5–16–89; 8:45 am]
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**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 Rate Filings

Issued May 10, 1989.

**AGENCY:** Federal Energy Regulatory Commission.

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

**SUMMARY:** This notice identifies revisions and additions to the record formats for rate 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. The file structure of the formats has been revised to simplify the filing of free form text records and to provide flexibility in the display of data in hard copy format.

**DATE:** The revised FERC rate filing record formats and hard copy filing formats are available on May 20, 1989.

**FOR FURTHER INFORMATION CONTACT:** Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 7010, Washington, DC 20426, (202) 357–8995 or (202) 357–8844.

**SUPPLEMENTARY INFORMATION:** The Commission staff is issuing revised record formats for rate filings in response to recommendations presented at the implementation conference held on February 1 and 2, 1989, and in subsequent comments. Technical revisions are described in Appendix A. Staff is also releasing with this notice the recommended hard copy filing formats for a rate filing.

The record formats are intended to standardize the electronic format in which certain data included in a rate filing are reported to the Commission. There is no change in the regulations identifying the contents of a rate filing and there is no intent to require companies to file more information than they have previously been required to submit. Companies may report data in more or less detail than specified in the record formats, as appropriate.

In response to concerns that the Commission may not be able to reproduce a company's official filing from the electronic submittal, staff is adopting a revised file structure that provides for flexibility in the hard copy display. Information in a rate filing will be submitted in three files: a file containing only structured data (FILE1), a second file containing all of the footnotes to the structured data (FILE2), and a third file consisting of free form text records, header records and trailer records (FILE3).

Using the revised file structure, a company may elect to display a particular statement or schedule in the Commission-specified format or substitute its own free form display in FILE3. However, the formatted data in FILE1 and the accompanying footnotes in FILE2 on the electronic medium must be provided in either case. The revised structure also enables footnotes to be printed with the applicable statement or schedule instead of at the end of the hard copy. The General Instructions for the rate filing record formats contain a more detailed description of the new method for submitting data on an electronic medium.

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 rate filings, these formats will not be available through CIPS. However, the revised record formats and hard copy formats are available (1) on a single 5.25" (1.2MB) or 3.5" (1.44MB) double-sided, high density diskette in ASCII text file format, or (2) on paper (411

pages). The diskettes and/or paper copy 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: RM87–17–000, Record Formats for Rate Filings (May 10, 1989). SPECIFY DISKETTE (5.25" or 3.5"), 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 Rate Filing Record Formats**

This appendix identifies the major technical changes to the rate filing record formats issued January 4, 1989.

*A. File Structure*

The Commission staff is adopting a revised file structure that provides for flexibility in the hard copy display. Information in a rate filing will be submitted in three files: a file containing only structured data (FILE1), a second file containing all of the footnotes to the structured data (FILE2), and a third file consisting of free form text, header records and trailer records (FILE3).

Using the revised structure, a company may elect to display a particular statement or schedule in the Commission-specified format or substitute its own free form display. The formatted data in FILE1 and the accompanying footnotes in FILE2 on the electronic medium are submitted in either case. The revised structure also enables footnotes to be printed with the applicable statement or schedule instead of at the end of the hard copy. The General Instructions for the record formats describe the new filing procedure for submitting data on an electronic medium.

*B. Other General Changes*

1. The comments column in the record formats is revised to conform to revisions in General Instruction and Item Number references.

2. Character positions are revised where new items are added or the length of an item has been changed.

3. The following data fields are now defined as character fields:

(a) All codes.

(b) All dates.

(c) All account numbers.

4. Base Period/Test Period Indicator is revised to "Period Reported" and codes "1" and "2" are used for base period and test period, respectively.

*C. Revisions to Specific Records*

RA01 (previously RA01) Rate Case Filing Requirements:

New Items:

a. Item 8: Alternative Code.

b. Item 9: Compliance Filing Indicator.

c. Item 10: Revision Code.

d. Item 11: Data Sensitivity Indicator.

RA02 (previously RA03) Statement A: Cost Classification Code=4 now includes both state and local income taxes.

RA03 (previously RA04) Statement B: No change.

RA04 (previously RA05) Statement C:

1. New Items:

a. Item 53: Date at Beginning of Period.

b. Item 58: Date at End of Period.

2. The title of Item 56 (old Item 46) is revised from "Transfers" to "Other Changes".

RA05 (previously RA06) Schedule C–1:

1. New Items:

a. Item 68: Subaccount Name (for subaccounts not listed in Exhibit E)

b. Item 71: Ending Base Period Date

2. The order of Items 65 (Function Code) and Item 66 (Project Name) is reversed. Project Name is labeled as an optional item.

3. Item 69 (Information Reported Code) is expanded to include a code for "prime account total".

RA06 (previously RA07) Schedule C–2:

1. The reference to Exhibit G is removed and the record format is revised to include amounts by general function (production, storage, transmission, distribution, and other) for additions and retirements projects.

2. Item 78 (FERC Docket Number) now has 13 character positions and should be left blank for Information Reported Codes 2 and 4.

3. The description of any plant additions or retirement projects is now provided in a footnote.

RA07 (previously RA09) Schedule C–3:

1. Item 89 (Docket Number) now has 13 character positions.

2. The words "Undistributed Overhead" are deleted from the description of Items 90 (Amount: Account 106) and 91 (Amount: Account 107).

3. Item 88 (Work Order Number) is now a character field.

RA08 (previously RA10) Schedule C–4:

1. New Item: Item 97—Subaccount Name (for subaccounts not listed in Exhibit E).

2. Item 95 (Storage Project Account) now includes Accounts 101 and 106.

3. Item 102 (Storage Activity) now contains codes for liquefaction and vaporization; end of month balance code is deleted from Item 102 (information is reported in Items 106 and 107).

RA09 (previously RA12) Statement D:

1. The name of Item 113 is revised from "Provision Cost" to "Provision".

2. The order of the adjustment descriptions and the adjustment amounts is reversed so that the description precedes the amount.

3. The name of Item 125 is revised from "Balance As Adjusted From Base Period" to "Accumulated Provisions As Adjusted".

RA10 (previously RA14) Statement E:

1. Item 128 (Working Capital Code) is revised. The code for "Prepaid Gas Purchase Agreements" is deleted and the code for "Misc. Other Working Capital" is revised to "Misc. Reserves".

2. Item 142 (Desc. of Other Working Capital Item) is now 30 character positions.

RA11 (previously RA15 and RA16) Schedule E–1:

1. Working Capital monthly balances are now reported in a single record format.

2. The items "Prepaid Gas Purchase Agreements" and "Account Number" are deleted.

RA12 (previously RA17) Schedule E–2: No change.

RA13 (previously RA18) Schedule E–3 (Part 1): No change.

RA14 (previously RA19) Schedule E–3 (Part 2): This record format is revised to permit the reporting of up to six yearly storage volumes and associated dollar amounts in new Items 199 through 210. New item 194 (Information Reported Code) is used to report multiples of six LIFO layers. Item 198 is now the first (oldest) LIFO layer in the record.

RA15 (previously RA20) Schedule E–4: This record format is revised to permit reporting of 13 monthly research and development balances, the 13 month total and average balances, the test period adjustment and the adjusted balance for each project in a single record. Item 215 (Year/Month) identifies the first month reported in a record.

RA16 (previously RA23) Statement F(2): This record format is revised to allow reporting of actual or hypothetical capital structure. Data for the base and test periods are now reported in a single record. New item 237 (Capital Category) identifies the source of capital.

RA17 (previously RA24) Statement F(3)–1: No change.

RA18 (previously RA25) Statement F(3):

1. The item "Reference" is now deleted.

2. Item 280 is revised from "Adjusted Annual Cost of All Debt Capital" to

"Adjusted Weighted Average Cost of All Debt Capital".

RA19 and RA20 (previously RA26) Statement F(3)g: There are significant revisions to the record format for Statement F(3)(g). These formats now include amortization of gain/loss on both reacquired debt and reacquired preferred stock. Record RA20 contains summary information for all issues.

RA21 (previously RA27) Statement F(4): Item 315 (Life of Series) is now labeled "Optional".

RA22 (previously RA28) Statement F(5)/F(5)–3a:

1. New Item: Item 326: Information Reported Code.

2. Item 341 (Net Proceeds in Total Dollars) now follows "Net Proceeds Per Share" in the record format.

RA23 (previously RA30) Schedule F(5)–1:

1. The time period codes in Note 3 are revised to include a code for year 5. Year codes begin with zero; month codes begin with one.

2. The item "Text for Changes in Common Stock Capital" is removed from Record RA23.

RA24 (previously RA31) Schedule F(5)–2/3(b):

1. The time period codes are revised as in RA23.

2. The comment for Item 371 (Average Number of Shares Outstanding) is revised.

3. The item "Text" is deleted. Explanations of any calculations made in this record are now explained in a footnote.

RA25 (previously RA32) Schedule F(5)–4/5: The number of character positions for Item 385 is now 20 positions.

RA26–RA28 (previously RA33–RA38) Schedule F(6): The Statement of Changes in Financial Position is now replaced by a Statement of Cash Flows. These record formats are identical to those used in Form Nos. 2 and 2–A with the exception of a Period Reported code (Items 417, 438 and 453), which is inserted in each record prior to the Footnote ID.

RA29–RA39 (previously RA39–RA49) Statement G:

1. There is no significant change to the record formats for Statement G. It is staff's opinion that the formats are consistent with the requirements of Section 154.63. Companies may still file Statement G at the level of detail permitted in previous rate filings. Companies also have the option to display data in a format different from the hard copy output produced by Commission software. For example, Statement G information may be sorted by customer if necessary to simplify the customer notice requirements.

2. The item "Well Number" is deleted from Record RA38 (previously RA48); item 584 (Well) is labeled as an optional item.

RA40 (previously RA50) Statement H(1), and Schedules H(1)–1(a), H(1)–1(b), and H(1)–1(c) Part 1

1. New Item: Item 617 (Information Reported Code)

2. Item 634 (Project Name) is labeled "Optional".

RA41 (previously RA52) Schedule H(1)–1(c) Part 2: Character positions are revised to be consistent with Record RA40.

RA42–RA47 (previously RA53–RA56) Schedule H(1)–2:

1. The purchased gas costs formats are substantially revised. Records RA42 through RA44 are to be used by pipelines with an approved PGA clause in their tariff. Record RA42 summarizes information reported in Records RA43 and 44. Record RA44 corresponds to the Projected Cost Record in Schedule Q1 of FERC Form No. 542–PGA. Record RA45 generally corresponds to the Special Supply Record in Schedule Q1, with modification.

2. Records RA45 through RA47 are to be used by pipelines which either do not have a Commission approved PGA clause or obtain a waiver of their PGA clause election. Record RA45 summarizes information reported in RA46 and RA47. Record RA46 is used to report commodity purchased gas costs; Record RA47 is used for noncommodity costs.

RA48 (previously RA58) Statement H(2):

New Items:

a. Item 778: Project Name

b. Item 781: Depreciation Method

RA49 (previously RA60) Schedule H(2)–1: The descriptions for other test period expenses now precede the amounts.

RA50 (previously RA61–RA62) Statement H(3): There is now a single record format for income taxes, and the structure is revised. The function code has been replaced by individual entries for each function.

RA51 (previously RA64) Schedule H(3)–6: New Item: Item 835—Information Reported Code

RA52 (previously RA65) Statement H(4):

1. Item 842 (Tax Type Code) now precedes the Information Reported Code.

2. The identity of Other Functions now precedes the amount.

RA53 (previously RA68) Statement I: No change.

RA54 (previously RA69) Schedule I–4: No change.

RA55 (previously RA70) Schedule I–5: No change.

RA56 (previously RA71) Schedule I–6 Part 1:

New Items:

a. Total Deliveries (First Day)

b. Total Deliveries (Second Day)

c. Total Deliveries (Third Day)

d. Total Three Day Average Volume

RA57 (previously RA72) Schedule I–6 Part 2: No change.

RA58 (previously RA73) Schedule I–7 Part 1: No change.

RA59 (previously RA74) Schedule I–7 Part 2: No change.

RA60 (previously RA75) Schedule I–7 Part 3: No change.

RA61–RA68 (previously RA82–RA89) Statement L (Major): The Comparative Balance Sheet Record Formats for Major natural gas companies correspond to the formats for FERC Form No. 2, pages 110–113. An Information Reported Code is added to RA61 through RA68 at the end of each record to indicate whether or not the balance sheet is reported on a consolidated basis. The Footnote ID is shifted one character position from the Form No. 2 version in each record.

RA69–RA73 (previously RA90–RA94) Statement L (Non-Major): The Comparative Balance Sheet Record Formats for Non-Major natural gas companies correspond to the formats for FERC Form No. 2–A, pages 4–5. An Information Reported Code is added to RA69 through RA73 at the end of each record to indicate whether or not the balance sheet is reported on a consolidated basis.

RA74–RA77 (previously RB01–RB04) Statement M (Major): The Statement of Income for the Year Record Formats for Major natural gas companies correspond to the formats for FERC Form No. 2, pages 114 117. An Information Reported Code is added to RA74 through RA77 at the end of each record to indicate whether or not the Statement of Income is reported on a consolidated basis.

RA78–RA80 (previously RB05–RB07) Statement M (Non-Major): The Statement of Income for the Year Record Formats for Non-Major natural gas companies correspond to the formats for FERC Form No. 2–A, pages 6–8. An Information Reported Code is added to RA78 through RA80 at the end of each record to indicate whether or not the Statement of Income is reported on a consolidated basis.

RB01 (previously RB08) Schedule N–1: Refer to RA04.

RB02 (previously RB09) Schedule N–1: Refer to RA05.

RB03 (previously RB10) Schedule N–2: Refer to RA09.

RB04 (previously RB11–RB12) Schedule N–3: Refer to RA10.

RB05 (previously RB14) Schedule N–4: Refer to RA16.

RB06 (previously RB15) Schedule N–5: Refer to RA40.

RB07 (previously RB17) Schedule N–6: Refer to RA48.

RB08 (previously RB19–RB20) Schedule N–7: Refer to RA50.

RB09 (previously RB22) Schedule N–7: Refer to RA03.

RB10 (previously RB23) Schedule N–8: Refer to RA52.

RB11 (new record) Schedule N–9: Refer to RA02.

RB12 (previously RB25) Schedule N–9: Refer to RA53.

RB13 (previously RB26) Schedule N–10: Refer to RA29.

RB14 (previously RB27) Schedule N–10: Refer to RA30.

RB15 (previously RB28) Schedule N–10: Refer to RA31.

RB16 (previously RB29) Schedule N–10: Refer to RA32.

RB17 (previously RB30) Schedule N–11: Refer to RA15.

RB18 (previously RB33) Footnotes: The Footnote Record now consists of a header record containing the Footnote ID and followed by text records with a maximum of 165 character positions. Companies may use fewer positions if desired or if necessary to conform to printer restrictions.

RB19 (New Record) Standardized Format Header Record: The Standardized Format Header Record is used in FILE3 to indicate that the statement or schedule identified in the header record (codes are defined in new Exhibit H) is to be printed in the FERC standardized format, using the appropriate data records in FILE1 and any referenced footnotes in FILE2.

RB20 (New Record) Non-Standard Format Header Record: The Non-Standard Format Header Record is used in FILE3 to indicate that the statement, schedule or portion thereof, identified in the header record (using Exhibit H) is to be printed using the free form text records following the header record. The free form records may consist of: (1) text for a statement, schedule or portion thereof which is not formatted in FILE1; or (2) records which are to be printed in lieu of the FERC standardized format for a statement or schedule that is formatted in FILE1. In the latter case, the data in FILE1 and the footnotes in FILE2 are not used for the hardcopy display, but are still required for analytical purposes.

A maximum of 165 character positions are provided for entering free form text.

RB21 (New Record) Non-Standard Format Trailer Record: The Non-Standard Format Trailer Record is used in FILE3 and follows any text or non-standard format records which follow an RB20 Header Record.

*D. Examples of The Use of Records RA19, RA20 and RA21*

Ex. 1: Print Statement C in the standardized format. In FILE3, input Record RB19 with statement code "C" in position 5. No other records are needed in FILE3. The print software will obtain the input data for Statement C from FILE1 and FILE2.

Ex. 2: Print Statement D in the standardized format followed by the working papers printed in landscape orientation at 15 cpi.

Input the following records in FILE3:

a. Record RB19 with schedule code "D" in positions 5–7. Data from RA09 records in FILE1 and footnotes from FILE2 will be used for printing.

b. Record RB20 with schedule code "D–1" in positions 5–7, "L" in position 15, and "15" in positions 16–17.

c. Text records for Schedule D–1 without prefix of any kind.

d. Record RB21 to indicate the end of the text for Schedule D–1.

e. Repeat (b) through (d) for Sch. D–2 and D–3.

Ex. 3: Print Schedule E–2 in a non-standard format using portrait orientation at 12 cpi.

Input the following records in FILE3:

a. Record RB20 with schedule code "E–2" in positions 5–7, "P" in position 15, and "12" in positions 16–17. The print software will not use the data in FILE1 and FILE2 for printing.

b. Text records with non-standard display for Schedule E–2 followed by footnotes in nonstandard form.

c. Record RB21.

*E. Revisions to Exhibits*

Exhibit A—Magnetic Tape Procedures: Submission Procedure #5 is revised to conform to the new three-file structure. File name formats are revised to include identifiers for Sensitive/NonSensitive, Original/Revisions, and Primary/Alternate filings.

Exhibit B—Diskette Filing Procedures: The revised procedures for file structure and file names also apply to diskettes.

Exhibit C—Codes for Gas Operating Revenues & Sales Volumes: No change.

Exhibit D—Operation & Maintenance Expense Chart of Accounts: No change.

Exhibit E—Miscellaneous Accounts: No change.

Exhibit F—FERC Geographic Area Names: No change.

Exhibit G—Function Codes:

1. "Other" codes for each function end in a "7".

2. The following additional codes are new:

a. Subtotal codes, ending in "9" for each function.

b. Transmission Plant—Communication Equip (Code 43).

c. General Plant—Onshore (Code 64).

d. General Plant—Offshore (Code 65).

e. General Plant—Clearing Account (Code 66).

f. Total—[Account 117] (Code 72).

g. Total—[Accounts 108, 111 and 117] (Code 74).

h. Total—All Accounts (Code 79).

Exhibit H—Statement/Schedule Record Codes (New Exhibit): This exhibit defines the codes that are used in FILE3 Header Records RA19 and RA20.

Exhibit J—NGPA Category/Subcategory Codes (New Exhibit): This exhibit contains the codes used to identify NGPA categories in Records RA43 and RA46.

[FR Doc. 89–11761 Filed 5–16–89; 8:45 am]

BILLING CODE 6717–01–M

## RAILROAD RETIREMENT BOARD

### 20 CFR Parts 225, 260, and 301

**RIN 3220–AA02**

### Railroad Retirement Act and Railroad Unemployment Insurance Act

**AGENCY:** Railroad Retirement Board.

**ACTION:** Notice of correction.

**SUMMARY:** The Railroad Retirement Board hereby corrects errors which would otherwise be carried into the forthcoming revised codification of 20 CFR Parts 1 to 399.

**EFFECTIVE DATE:** April 1, 1989.

**ADDRESS:** Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 (FTS 386–4513).

**SUPPLEMENTARY INFORMATION:** This notice corrects typographical errors appearing in section 225.34(b) of the Final Rule document published in the **Federal Register** on March 29, 1989 (54 FR 12901), which redesignates the previous Part 225 as Part 226, and adds a new Part 225 to Title 20 of the Code of Federal Regulations.

The notice corrects an inconsistency which currently exists by using the term "limit" in the section heading of § 260.6

and the term "limits" in the section heading of § 260.7 of 20 CFR Part 260.

The notice also corrects the authority citation for Part 301, because Part 301 currently contains only two sections, but has separate authority citations for each section.

**List of Subjects in 20 CFR Parts 225, 260, and 301**

Railroads, Railroad employees, Railroad retirement.

**PART 225—COMPUTATION OF ANNUITY**

1. The authority citation for Part 225 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5).

**§ 225.34 [Amended]**

2. Section 225.34, 54 FR 12908, is amended by redesignating paragraphs "(i)", "(ii)", and "(iii)", and the reference thereto, to "(1)", "(2)", and "(3)", respectively.

**PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD FROM DECISIONS ISSUED BY THE BUREAU OF RETIREMENT CLAIMS AND THE BUREAU OF COMPENSATION AND CERTIFICATION**

3. The authority citation for Part 260 is revised to read as follows:

Authority: 45 U.S.C. 231f(b)(5).

**§ 260.6 [Amended]**

4. Title 20 CFR, Part 260, § 260.6 is amended by revising the section heading to read: "Time limits for issuing a hearing decision."

**PART 301—EMPLOYERS UNDER THE ACT**

5. The authority citation for Part 301 is added to read as follows, and the authority citation following the sections are removed:

Authority: 45 U.S.C. 362(1).

Dated: May 10, 1989.

By Authority of the Board.

Beatrice Ezerski,

*Secretary to the Board.*

[FR Doc. 89-11741 Filed 5-16-89; 8:45 am]

BILLING CODE 7905-01-M

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 602**

**[T.D. 8251]**

**RIN 1545-AA07**

## Credit for Increasing Research Activity

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final amendments to the income tax regulations to provide rules for the credit for increasing research activities. The research credit was added to the law by the Economic Recovery Tax Act of 1981. The research credit was subsequently amended by the Tax Reform Act of 1984, the Tax Reform Act of 1986, and the Technical and Miscellaneous Revenue Act of 1988. The regulations provide the public with guidance needed to comply with the applicable tax law.

**EFFECTIVE DATE:** These regulations are effective for amounts paid or incurred after June 30, 1981, and before January 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** David S. Hudson, 202-566-4821 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background

On January 21, 1983, the Federal Register published (48 FR 2790) proposed amendments to the Income Tax Regulations (26 CFR Part 1) relating to the credit for increasing research activities. A large number of comments were received and a public hearing was held on April 14, 1983. The credit for increasing research activities was originally provided by section 44F of the Internal Revenue Code, as added by section 221 of the Economic Recovery Tax Act of 1981. Section 471(c) of the Tax Reform Act of 1984 redesignated section 44F as section 30. The Tax Reform Act of 1984 did not amend the research credit provisions substantively. Section 231 of the Tax Reform Act of 1986 redesignated section 30 as section 41. The Tax Reform Act of 1986 extended the credit to amounts paid or incurred before January 1, 1989; amended the definition of qualified research for taxable years beginning after December 31, 1985; provided a separate credit with respect to certain payments to qualified organizations for basic research; and amended the credit provisions in certain other aspects. The Technical and Miscellaneous Revenue Act of 1988 extended the credit to amounts paid or incurred before January 1, 1990.

The regulations provided in this document are promulgated under section 41 for conformity purposes. Where the law has changed the regulations contain separate provisions with their own effective dates. In general, those portions of the regulations relating to the Tax Reform Act of 1986 have been reserved.

### Explanation of Provisions

*Joint Ventures*

Section 41 (b) (1) defines the term "qualified research expenses" as the sum of the taxpayer's in-house research expenses and the taxpayer's contract research expenses, that are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer. If the taxpayer is not carrying on the trade or business for section 162 purposes to which the research relates, then the taxpayer is not entitled to the research credit for such expenditures. In the case of partnerships the carrying on a trade or business requirement must be satisfied at the partnership level without regard to the trade or business of any partner.

Section 1.44F-2(a)(4)(ii) of the proposed regulations provided an exception to the carrying on a trade or business requirement at the partnership level in the case of certain joint ventures if all the partners are entitled to the results of the research and the following is true with respect to each partner: If the partner had carried on the research that was in fact carried on by the partnership, all the research expense paid or incurred in carrying on the research would have been paid or incurred by the partner in carrying on a trade or business of the partner. Several commentators suggested that the regulations should not require each member of the joint venture to satisfy the "carrying on" test for the particular research being performed by the joint venture. They suggested that the regulations be modified to deny the credit only to those joint venturers who do not satisfy the "carrying on" test. Section 1.41-2(a)(4)(ii) of the final regulations removes the requirement that all partners must satisfy the "carrying on" test. However, to ensure that the removal of that requirement does not lead to abuse, the final regulations add certain limitations similar to those in section 168(h)(6) relating to tax-exempt use property.

*Funded Research*

Section 41(d)(4)(H) provides that the term qualified research does not include any research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity). Section 1.44F–4(d)(1) of the proposed regulations provided that amounts paid under any agreement that are contingent on the success of the research and thus considered to be paid for the product or result of the research are not treated as funding. Section 1.44F–4(d)(2) of the proposed regulations provided that, if a taxpayer performing research for another person retains no substantial rights in the research under the agreement providing for the research, the research is treated as fully funded, and none of the expenses paid or incurred by the taxpayer in performing the research is treated as paid or incurred for qualified research. One commentator stated that, in a case where the researcher does not retain substantial rights in the results of the research and the funder's payments are contingent on the success of the research, neither the researcher nor the funder is entitled to treat any of the expenditures as paid or incurred for qualified research. The commentator's reading of the interaction of the contingent payment and the substantial rights rules is the correct reading of the two provisions. The proposed regulations are finalized as proposed on this matter. Section 1.44F–4(d)(4) of the proposed regulations provided that independent research and development payments under certain government contracts are treated as funding the research to which the payments relate. Several commentators suggested that such payments are analogous to the recovery of overhead costs through the sale of products. The final regulations provide that such payments are not to be treated as funding except where they are properly severable from the underlying contract.

*Definition of Research and Experimental Expenditures*

Section 41(d)(1) provides, in part, that the term "qualified research" means research with respect to which expenditures may be treated as expenses under section 174. Section 1.174–2 of the proposed regulations that was originally proposed on January 21, 1983, included extensive clarifications of the regulations under section 174, including a clarification of the treatment of computer software.

This portion of the proposed regulations is not being finalized by this document. The proposed amendments to § 1.174–2 have been revised and superseded by a separate notice of proposed rulemaking.

**Special Analyses**

The amendment of the regulations proposed by notice of proposed rulemaking on January 21, 1983, and adopted by this Treasury decision is interpretative. Accordingly, the Regulatory Flexibility Act (5 U.S.C. chapter 6) did not apply to the notice of proposed rulemaking and no Regulatory Flexibility Analysis was required. The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

**Drafting Information**

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

**List of Subjects**

*26 CFR 1.0–1 through 1.58–8*

Income taxes, Tax liability, Credits.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

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

## PART 602—[AMENDED]

**Paragraph 1.** The authority for Part 602 continues to read as follows:

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

**§ 602.101 [Amended]**

**Par. 2.** In the table of control numbers in § 602.101, the language "§ 1.41–4 (b) and (c)....1541–0074" is removed and the language "§ 1.41–4A (b) and (c)....1545–0074" is added in its place.

## PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

**Par. 3.** The authority for Part 1 continues to read in part:

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

**§§ 1.41–0A through 1.41–8A [Redesignated from 1.41–0 through 1.41–8 Respectively]**

**Par. 4.** Sections 1.41–0 through 1.41–8 are redesignated §§ 1.41–0A through 1.41–8A, respectively, and the following center heading is added to precede § 1.41–0A: "Taxable Years Beginning Before January 1, 1987".

**§ 1.41–0A [Amended]**

**Par. 5.** In § 1.41–0A as redesignated, the language "1.41–1 through –8" is removed and the language "1.41–1A through –8A" is added in its place.

**§ 1.41–1A [Amended]**

**Par. 6.** In § 1.41–1A(a) as redesignated, the language "§ 1.41–3(a)" is removed and the language "§ 1.41–3A(a)" is added in its place.

**§ 1.218–0 [Amended]**

Par. 7. In § 1.218–0, the language "1.41–0 through 1.41–8" is removed and the language "1.41–0A through 1.41–8A" is added in its place.

Par. 8. The following new center heading and §§ 1.41–0 through 1.41–9 are added in the appropriate places.

Taxable Years Beginning After December 31, 1986

**§ 1.41–0 Table of contents.**

This section lists the paragraphs contained in sections 1.41–0 through 1.41–9.

**§ 1.41–1 Introduction to regulations under section 41.**

Sections 1.41–2 through 1.41–9 deal only with certain provisions of section 41. The following table identifies the provisions of section 41 that are dealt with, and lists each with the section of the regulations in which it is covered:

| Section of the regulations | Section of the Code |
|---|---|
| § 1.41–2 | 41(b)(1) |
| | 41(b)(2)(A)(ii) |
| | 41(b)(2)(A)(iii) |
| | 41(b)(2)(B) |
| | 41(b)(3) |
| § 1.41–3 | 41(c)(2) |
| | 41(f)(4) |
| § 1.41–5 | 41(d) |
| § 1.41–7 | 41(e) |
| § 1.41–8 | 41(f)(1) |
| § 1.41–9 | 41(f)(2) |
| | 41(f)(3) |
| | 41(g) |

Sections 1.41–4 and 1.41–6 deal with the definition of qualified research and basic research for taxable years beginning after December 31, 1985. Section 1.41–3 also deals with the special rule in section 221(d)(2) of the Economic Recovery Tax Act of 1981 relating to taxable years overlapping the effective dates of section 41. Section 41 was formerly designated sections 30 and 44F. The regulations refer to these sections as section 41 for conformity purposes. Of course, whether section 41, 30 or 44F applies to a particular expenditure depends upon when the expenditure was paid or incurred.

**§ 1.41–2 Qualified Research Expenses.**

(a) *Trade or business requirement*—(1) *In general.* An in-house research expense of the taxpayer or a contract research expense of the taxpayer is a qualified research expense only if the expense is paid or incurred by the taxpayer in carrying on a trade or business of the taxpayer. The phrase "in carrying on a trade or business" has the same meaning for purposes of section 41(b)(1) as it has for purposes of section 162; thus, expenses paid or incurred in connection with a trade or business within the meaning of section 174(a) (relating to the deduction for research and experimental expenses) are not necessarily paid or incurred in carrying on a trade or business for purposes of section 41. A research expense must relate to a particular trade or business being carried on by the taxpayer at the time the expense is paid or incurred in order to be a qualified research expense. For purposes of section 41, a contract research expense of the taxpayer is not a qualified research expense if the product or result of the research is intended to be transferred to another in return for license or royalty payments and the taxpayer does not use the product of the research in the taxpayer's trade or business.

(2) *New business.* Expenses paid or incurred prior to commencing a new business (as distinguished from expanding an existing business) may be paid or incurred in connection with a trade or business but are not paid or incurred in carrying on a trade or business. Thus, research expenses paid or incurred by a taxpayer in developing a product the sale of which would constitute a new trade or business for the taxpayer are not paid or incurred in carrying on a trade or business.

(3) *Research performed for others*—(i) *Taxpayer not entitled to results.* If the taxpayer performs research on behalf of another person and retains no substantial rights in the research, that research shall not be taken into account by the taxpayer for purposes of section 41. See § 1.41–5(d)(2).

(ii) *Taxpayer entitled to results.* If the taxpayer in carrying on a trade or business performs research on behalf of other persons but retains substantial rights in the research, the taxpayer shall take otherwise qualified expenses for that research into account for purposes

of section 41 to the extent provided in § 1.41–5(d)(3).

(4) *Partnerships*—(i) *In general.* An in-house research expense or a contract research expense paid or incurred by a partnership is a qualified research expense of the partnership if the expense is paid or incurred by the partnership in carrying on a trade or business of the partnership, determined at the partnership level without regard to the trade or business of any partner.

(ii) *Special rule for certain partnerships and joint ventures.* (A) If a partnership or a joint venture (taxable as a partnership) is not carrying on the trade or business to which the research relates, then the general rule in paragraph (a)(4)(i) of this section would not allow any of such expenditures to qualify as qualified research expenses.

(B) Notwithstanding paragraph (a)(4)(ii)(A) of this section, if all the partners or venturers are entitled to make independent use of the results of the research, this paragraph (a)(4)(ii) may allow a portion of such expenditures to be treated as qualified research expenditures by certain partners or venturers.

(C) First, in order to determine the amount of credit that may be claimed by certain partners or venturers, the amount of qualified research expenditures of the partnership or joint venture is determined (assuming for this purpose that the partnership or joint venture is carrying on the trade or business to which the research relates).

(D) Second, this amount is reduced by the proportionate share of such expenses allocable to those partners or venturers who would not be able to claim such expenses as qualified research expenditures if they had paid or incurred such expenses directly. For this purpose such partners' or venturers' proportionate share of such expenses shall be determined on the basis of such partners' or venturers' share of partnership items of income or gain (excluding gain allocated under section 704(c)) which results in the largest proportionate share. Where a partner's or venturer's share of partnership items of income or gain (excluding gain allocated under section 704(c)) may vary during the period such partner or venturer is a partner or venturer in such partnership or joint venture, such share shall be the highest share such partner or venturer may receive.

(E) Third, the remaining amount of qualified research expenses is allocated among those partners or venturers who would have been entitled to claim a credit for such expenses if they had paid or incurred the research expenses in their own trade or business, in the relative proportions that such partners or venturers share deductions for expenses under section 174 for the taxable year that such expenses are paid or incurred.

(F) For purposes of section 41, research expenditures to which this paragraph (a)(4)(ii) applies shall be treated as paid or incurred directly by such partners or venturers. See § 1.41–9(a)(3)(ii) for special rules regarding these expenses.

(iii) The following examples illustrate the application of the principles contained in paragraph (a)(4)(ii) of this section.

*Example (1).* A joint venture (taxable as a partnership) is formed by corporations A, B, and C to develop and market a supercomputer. A and B are in the business of developing computers, and each has a 30 percent distributive share of each item of income, gain, loss, deduction, credit and basis of the joint venture. C, which is an investment banking firm, has a 40 percent distributive share of each item of income, gain, loss, deduction, credit and basis of the joint venture. The joint venture agreement provides that A's, B's and C's distributive shares will not vary during the life of the joint venture, liquidation proceeds are to be distributed in accordance with the partners' capital account balances, and any partner with a deficit in its capital account following the distribution of liquidation proceeds is required to restore the amount of such deficit to the joint venture. Assume in Year 1 that the joint venture incurs $100x of "qualified research expenses." Assume further that the joint venture cannot claim the research credit for such expenses because it is not carrying on the trade or business to which the research relates. In addition A, B, and C are all entitled to make independent use of the results of the research. First, the amount of qualified research expenses of the joint venture is $100x. Second, this amount is reduced by the proportionate share of such expenses allocable to C, the venturer which would not have been able to claim such expenses as qualified research expenditures if it had paid or incurred them directly. C's proportionate share of such expenses is $40x (40% of $100x). The reduced amount is $60x. Third, the remaining $60x of qualified research expenses is allocated between A and B in the relative proportions that A and B share deductions for expenses under section 174. A is entitled to treat $30x ((30%/(30%+30%)) $60x) as a qualified research expense. B is also entitled to treat $30x ((30%/(30%+30%)) $60x) as a qualified research expense.

*Example (2).* Assume the same facts as in example (1) except that the joint venture agreement provides that during the first 2 years of the joint venture, A and B are each allocated 10 percent of each item of income, gain, loss, deduction, credit and basis, and C is allocated 80 percent of each item of income, gain, loss, deduction, credit and basis. Thereafter the allocations are the same as in example (1). Assume for purposes of this example that such allocations have substantial economic effect for purposes of section 704 (b). C's highest share of such items during the life of the joint venture is 80 percent. Therefore C's proportionate share of the joint venture's qualified research expenses is $80x (80% of $100x). The reduced amount of qualified research expenses is $20x ($100x−$80x). A is entitled to treat $10x ((10%/(10%+10%)) $20x) as a qualified research expense in Year 1. B is also entitled to treat $10x ((10%/(10%+10%)) $20x) as a qualified research expense in Year 1.

(b) *Supplies and personal property used in the conduct of qualified research*—(1) *In general.* Supplies and personal property (except to the extent provided in paragraph (b)(4) of this section) are used in the conduct of qualified research if they are used in the performance of qualified services (as defined in section 41(b)(2)(B), but without regard to the last sentence thereof) by an employee of the taxpayer (or by a person acting in a capacity similar to that of an employee of the taxpayer; see example (6) of § 1.41–2(e)(5)). Expenditures for supplies or for the use of personal property that are indirect research expenditures or general and administrative expenses do not qualify as inhouse research expenses.

(2) *Certain utility charges*—(i) *In general.* In general, amounts paid or incurred for utilities such as water, electricity, and natural gas used in the building in which qualified research is performed are treated as expenditures for general and administrative expenses.

(ii) *Extraordinary expenditures.* To the extent the taxpayer can establish that the special character of the qualified research required additional extraordinary expenditures for utilities, the additional expenditures shall be treated as amounts paid or incurred for supplies used in the conduct of qualified research. For example, amounts paid for electricity used for general laboratory lighting are treated as general and administrative expenses, but amounts paid for electricity used in operating high energy equipment for qualified research (such as laser or nuclear research) may be treated as expenditures for supplies used in the conduct of qualified research to the extent the taxpayer can establish that the special character of the research required an extraordinary additional expenditure for electricity.

(3) *Right to use personal property.* The determination of whether an amount is paid to or incurred for another person for the right to use personal property in the conduct of qualified research shall be made without regard to the characterization of the transaction as a lease under section 168(f)(8) (as that

section read before it was repealed by the Tax Reform Act of 1986). See § 5c.168(f)(8)-1(b).

(4) *Use of personal property in taxable years beginning after December 31, 1985.* For taxable years beginning after December 31, 1985, amounts paid or incurred for the use of personal property are not qualified research expenses, except for any amount paid or incurred to another person for the right to use (time-sharing) computers in the conduct of qualified research. The computer must be owned and operated by someone other than the taxpayer, located off the taxpayer's premises, and the taxpayer must not be the primary user of the computer.

(c) *Qualified services*—(1) *Engaging in qualified research.* The term "engaging in qualified research" as used in section 41(b)(2)(B) means the actual conduct of qualified research (as in the case of a scientist conducting laboratory experiments).

(2) *Direct supervision.* The term "direct supervision" as used in section 41(b)(2)(B) means the immediate supervision (first-line management) of qualified research (as in the case of a research scientist who directly supervises laboratory experiments, but who may not actually perform experiments). "Direct supervision" does not include supervision by a higher-level manager to whom first-line managers report, even if that manager is a qualified research scientist.

(3) *Direct support.* The term "direct support" as used in section 41(b)(2)(B) means services in the direct support of either—

(i) Persons engaging in actual conduct of qualified research, or

(ii) Persons who are directly supervising persons engaging in the actual conduct of qualified research. For example, direct support of research includes the services of a secretary for typing reports describing laboratory results derived from qualified research, of a laboratory worker for cleaning equipment used in qualified research, of a clerk for compiling research data, and of a machinist for machining a part of an experimental model used in qualified research. Direct support of research activities does not include general administrative services, or other services only indirectly of benefit to research activities. For example, services of payroll personnel in preparing salary checks of laboratory scientists, of an accountant for accounting for research expenses, of a janitor for general cleaning of a research laboratory, or of officers engaged in supervising financial or personnel matters do not qualify as direct support of research. This is true whether general administrative personnel are part of the research department or in a separate department. Direct support does not include supervision. Supervisory services constitute "qualified services" only to the extent provided in paragraph (c)(2) of this section.

(d) *Wages paid for qualified services*—(1) *In general.* Wages paid to or incurred for an employee constitute in-house research expenses only to the extent the wages were paid or incurred for qualified services performed by the employee. If an employee has performed both qualified services and nonqualified services, only the amount of wages allocated to the performance of qualified services constitutes an in-house research expense. In the absence of another method of allocation that the taxpayer can demonstrate to be more appropriate, the amount of in-house research expense shall be determined by multiplying the total amount of wages paid to or incurred for the employee during the taxable year by the ratio of the total time actually spent by the employee in the performance of qualified services for the taxpayer to the total time spent by the employee in the performance of all services for the taxpayer during the taxable year.

(2) *"Substantially all."* Notwithstanding paragraph (d)(1) of this section, if substantially all of the services performed by an employee for the taxpayer during the taxable year consist of services meeting the requirements of section 41(b)(2)(B) (i) or (ii), then the term "qualified services" means all of the services performed by the employee for the taxpayer during the taxable year. Services meeting the requirements of section 41(b)(2)(B) (i) or (ii) constitute substantially all of the services performed by the employee during a taxable year only if the wages allocated (on the basis used for purposes of paragraph (d)(1) of this section) to services meeting the requirements of section 41(b)(2)(B) (i) or (ii) constitute at least 80 percent of the wages paid to or incurred by the taxpayer for the employee during the taxable year.

(e) *Contract research expenses*—(1) *In general.* A contract research expense is 65 percent of any expense paid or incurred in carrying on a trade or business to any person other than an employee of the taxpayer for the performance on behalf of the taxpayer of—

(i) Qualified research as defined in § 1.41-5, or

(ii) Services which, if performed by employees of the taxpayer, would constitute qualified services within the meaning of section 41(b)(2)(B).

Where the contract calls for services other than services described in this paragraph (e)(1), only 65 percent of the portion of the amount paid or incurred that is attributable to the services described in this paragraph (e)(1) is a contract research expense.

(2) *Performance of qualified research.* An expense is paid or incurred for the performance of qualified research only to the extent that it is paid or incurred pursuant to an agreement that—

(i) Is entered into prior to the performance of the qualified research,

(ii) Provides that research be performed on behalf of the taxpayer, and

(iii) Requires the taxpayer to bear the expense even if the research is not successful.

If an expense is paid or incurred pursuant to an agreement under which payment is contingent on the success of the research, then the expense is considered paid for the product or result rather than the performance of the research, and the payment is not a contract research expense. The previous sentence applies only to that portion of a payment which is contingent on the success of the research.

(3) *"On behalf of."* Qualified research is performed on behalf of the taxpayer if the taxpayer has a right to the research results. Qualified research can be performed on behalf of the taxpayer notwithstanding the fact that the taxpayer does not have exclusive rights to the results.

(4) *Prepaid amounts.* Notwithstanding paragraph (e)(1) of this section, if any contract research expense paid or incurred during any taxable year is attributable to qualified research to be conducted after the close of such taxable year, the expense so attributable shall be treated for purposes of section 41(b)(1)(B) as paid or incurred during the period during which the qualified research is conducted.

(5) *Examples.* The following examples illustrate provisions contained in paragraphs (e) (1) through (4) of this section.

*Example (1).* A, a cash-method taxpayer using the calendar year as the taxable year, enters into a contract with B Corporation under which B is to perform qualified research on behalf of A. The contract requires A to pay B $300x, regardless of the success of the research. In 1982, B performs all of the research, and A makes full payment of $300x under the contract. Accordingly, during the taxable year 1982, $195x (65

percent of the payment of $300x) constitutes a contract research expense of A.

*Example (2).* The facts are the same as in example (1), except that B performs 50 percent of the research in 1983. Of the $195x of contract research expense paid in 1982, paragraph (e)(4) of this section provides that $97.5x (50 percent of $195x) is a contract research expense for 1982 and the remaining $97.5x is contract research expense for 1983.

*Example (3).* The facts are the same as in example (1), except that instead of calling for a flat payment of $300x, the contract requires A to reimburse B for all expenses plus pay B $100x. B incurs expenses attributable to the research as follows:

| | |
|---|---|
| Labor | $90x |
| Supplies | 20x |
| Depreciation on equipment | 50x |
| Overhead | 40x |
| Total | 200x |

Under this agreement A pays B $300x during 1982. Accordingly, during taxable year 1982, $195x (65 percent of $300x) of the payment constitutes a contract research expense of A.

*Example (4).* The facts are the same as in example (3), except that A agrees to reimburse B for all expenses and agrees to pay B an additional amount of $100x, but the additional $100x is payable only if the research is successful. The research is successful and A pays B $300x during 1982. Paragraph (e)(2) of this section provides that the contingent portion of the payment is not an expense incurred for the performance of qualified research. Thus, for taxable year 1982, $130x (65 percent of the payment of $200x) constitutes a contract research expense of A.

*Example (5).* C conducts in-house qualified research in carrying on a trade or business. In addition, C pays D Corporation, a provider of computer services, $100x to develop software to be used in analyzing the results C derives from its research. Because the software services, if performed by an employee of C, would constitute qualified services, $65x of the $100x constitutes a contract research expense of C.

*Example (6).* C conducts in-house qualified research in carrying on C's trade or business. In addition, C contracts with E Corporation, a provider of temporary secretarial services, for the services of a secretary for a week. The secretary spends the entire week typing reports describing laboratory results derived from C's qualified research. C pays E $400 for the secretarial service, none of which constitutes wages within the meaning of section 41(b)(2)(D). These services, if performed by employees of C, would constitute qualified services within the meaning of section 41(b)(2)(B). Thus, pursuant to paragraph (e)(1) of this section, $260 (65 percent of $400) constitutes a contract research expense of C.

*Example (7).* C conducts in-house qualified research in carrying on C's trade or business. In addition, C pays F, an outside accountant, $100x to keep C's books and records pertaining to the research project. The activity carried on by the accountant does not constitute qualified research as defined in section 41(d). The services performed by the accountant, if performed by an employee of C, would not constitute qualified services (as defined in section 41(b)(2)(B)). Thus, under paragraph (e)(1) of this section, no portion of the $100x constitutes a contract research expense.

**§ 1.41-3 Base period research expense.**

(a) *Number of years in base period.* The term "base period" generally means the 3 taxable years immediately preceding the year for which a credit is being determined ("determination year"). However, if the first taxable year of the taxpayer ending after June 30, 1981, ends in 1981 or 1982, then with respect to that taxable year the term "base period" means the immediately preceding taxable year. If the second taxable year of the taxpayer ending after June 30, 1981, ends in 1982 or 1983, then with respect to that taxable year the term "base period" means the 2 immediately preceding taxable years.

(b) *New taxpayers.* If, with respect to any determination year, the taxpayer has not been in existence for the number of preceding taxable years that are included under paragraph (a) of this section in the base period for that year, then for purposes of paragraph (c)(1) of this section (relating to the determination of average qualified research expenses during the base period), the taxpayer shall be treated as—

(1) Having been in existence for that number of additional 12-month taxable years that is necessary to complete the base period specified in paragraph (a) of this section, and

(2) Having had qualified research expenses of zero in each of those additional years.

(c) *Definition of base period research expenses.* For any determination year, the term "base period research expenses" means the greater of—

(1) The average qualified research expenses for taxable years during the base period, or

(2) Fifty percent of the qualified research expenses for the determination year.

(d) *Special rules for short taxable years*—(1) *Short determination year.* If the determination year for which a research credit is being taken is a short taxable year, the amount taken into account under paragraph (c)(1) of this section shall be modified by multiplying that amount by the number of months in the short taxable year and dividing the result by 12.

(2) *Short base period year.* For purposes of paragraph (c)(1) of this section, if a year in the base period is a short taxable year, the qualified research expenses paid or incurred in the short taxable year are deemed to be equal to the qualified research expenses actually paid or incurred in that year multiplied by 12 and divided by the number of months in that year.

(3) *Years overlapping the effective dates of section 41 (section 44F)*—(i) *Determination years.* If a determination year includes months before July 1981, the determination year is deemed to be a short taxable year including only the months after June 1981. Accordingly, paragraph (d)(1) of this section is applied for purposes of determining the base period expenses for such year. See section 221(d)(2) of the Economic Recovery Tax Act of 1981.

(ii) *Base period years.* No adjustment is required in the case of a base period year merely because it overlaps June 30, 1981.

(4) *Number of months in a short taxable year.* The number of months in a short taxable year is equal to the number of whole calendar months contained in the year plus fractions for any partially included months. The fraction for a partially included month is equal to the number of days in the month that are included in the short taxable year divided by the total number of days in that month. Thus, if a short taxable year begins on January 1, 1982, and ends on June 9, 1982, it consists of 5 and 9/30 months.

(e) *Examples.* The following examples illustrate the application of this section.

*Example (1).* X Corp., an accrual-method taxpayer using the calendar year as its taxable year, is organized and begins carrying on a trade or business during 1979 and subsequently incurs qualified research expenses as follows:

| | |
|---|---|
| 1979 | $10x |
| 1980 | 150x |
| 1/1/81–6/30/81 | 90x |
| 7/1/81–12/31/81 | 110x |
| 1982 | 250x |
| 1983 | 450x |

(i) *Determination year 1981.* For determination year 1981, the base period consists of the immediately preceding taxable year, calendar year 1980. Because the determination year includes months before July 1981, paragraph (d)(3)(i) requires that the determination year be treated as a short taxable year. Thus, for purposes of paragraph (c)(1), as modified by paragraph (d)(1), the average qualified research expenses for taxable years during the base period are $75x ($150x, the average qualified research expenses for the base period, multiplied by 6, the number of months in the determination year after June 30, 1981, and divided by 12). Because this amount is greater than the amount determined under paragraph (c)(2) (50 percent of the determination year's qualified research expense of $110x, or $55x), the amount of base period research expenses

is $75x. The credit for determination year 1981 is equal to 25 percent of the excess of $110x (the qualified research expenditures incurred during the determination year including only expenditures accrued on or after July 1, 1981, through the end of the determination year) over $75x (the base period research expenses).

(ii) *Determination year 1982.* For determination year 1982, the base period consists of the 2 immediately preceding taxable years, 1980 and 1981. The amount determined under paragraph (c)(1) of this section (the average qualified research expenses for taxable years during the base period) is $175x ([$150x+$90x+$110x]/2). This amount is greater than the amount determined under paragraph (c)(2) (50 percent of $250x, or $125x). Accordingly, the amount of base period research expenses is $175x. The credit for determination year 1982 is equal to 25 percent of the excess of $250x (the qualified research expenses incurred during the determination year) over $175x (the base period research expenses).

(iii) *Determination year 1983.* For determination year 1983, the base period consists of the 3 immediately preceding taxable years 1980, 1981 and 1982. The amount determined under paragraph (c)(1) of this section (the average qualified research expenses for taxable years during the base period) is $200x ([$150x+$200x+$250x]/3). The amount determined under paragraph (c)(2) is $225x (50 percent of the $450x of qualified research expenses in 1983). Accordingly, the amount of base period research expenses is $225x. The credit for determination year 1983 is equal to 25 percent of the excess of $450x (the qualified research expenses incurred during the determination year) over $225x (the base period research expenses).

*Example (2).* Y, an accrual-basis corporation using the calendar year as its taxable year comes into existence and begins carrying on a trade or business on July 1, 1983. Y incurs qualified research expenses as follows:

| | |
|---|---|
| 7/1/83—12/31/83 | $80x |
| 1984 | 200x |
| 1985 | 200x |

(i) *Determination year 1983.* For determination year 1983, the base period consists of the 3 immediately preceding taxable years: 1980, 1981 and 1982. Although Y was not in existence during 1980, 1981 and 1982, Y is treated under paragraph (b) of this section as having been in existence during those years with qualified research expenses of zero. Thus, the amount determined under paragraph (c)(1) of this section (the average qualified research expenses for taxable years during the base period) is $0x ([$0x+$0x+$0x]/3). The amount determined under paragraph (c)(2) of this section is $40x (50 percent of $80x). Accordingly, the amount of base period research expenses is $40x. The credit for determination year 1983 is equal to 25 percent of the excess of $80x (the qualified research expenses incurred during the determination year) over $40x (the base period research expenses).

(ii) *Determination year 1984.* For determination year 1984, the base period consists of the 3 immediately preceding taxable years: 1981, 1982, and 1983. Under paragraph (b) of this section, Y is treated as having been in existence during years 1981 and 1982 with qualified research expenses of zero. Because July 1 through December 31, 1983 is a short taxable year, paragraph (d)(2) of this section requires that the qualified research expenses for that year be adjusted to $160x for purposes of determining the average qualified research expenses during the base period. The $160x results from the actual qualified research expenses for that year ($80x) multiplied by 12 and divided by 6 (the number of months in the short taxable year). Accordingly, the amount determined under paragraph (c)(1) of this section (the average qualified research expenses for taxable years during the base period) is $53⅓x ([$0x+$0x+$160x]/3). The amount determined under paragraph (c)(2) of this section is $100x (50 percent of $200x). The amount of base period research expenses is $100x. The credit for determination year 1984 is equal to 25 percent of the excess of $200x (the qualified research expenses incurred during the determination year) over $100x (the base period research expenses).

(iii) *Determination year 1985.* For determination year 1985, the base period consists of the 3 immediately preceding taxable years: 1982, 1983, and 1984. Pursuant to paragraph (b) of this section, Y is treated as having been in existence during 1982 with qualified research expenses of zero. Because July 1 through December 31, 1982, is a short taxable year, paragraph (d)(2) of this section requires that the qualified research expense for that year be adjusted to $160x for purposes of determining the average qualified research expenses for taxable years during the base period. This $160x is the actual qualified research expense for that year ($80x) multiplied by 12 and divided by 6 (the number of months in the short taxable year). Accordingly, the amount determined under paragraph (c)(1) of this section (the average qualified research expenses for taxable years during the base period) is $120x ([$0x+$160x+$200x]/3). The amount determined under paragraph (c)(2) of this section is $100x (50 percent of $200x). The amount of base period research expenses is $120x. The credit for determination year 1985 is equal to 25 percent of the excess of $200x (the qualified research expenses incurred during the determination year) over $120x (the base period research expenses).

**§ 1.41-4 Qualified research for taxable years beginning after December 31, 1985. [Reserved]**

**§ 1.41-5 Qualified research for taxable years beginning before January 1, 1986.**

(a) *General rule.* Except as otherwise provided in section 30(d) (as that section read before amendment by the Tax Reform Act of 1986) and in this section, the term "qualified research" means research, expenditures for which would be research and experimental expenditures within the meaning of section 174. Expenditures that are ineligible for the section 174 deduction elections are not expenditures for qualified research. For example, expenditures for the acquisition of land or depreciable property used in research, and mineral exploration costs described in section 174(d), are not expenditures for qualified research.

(b) *Activities outside the United States*—(1) *In-house research.* In-house research conducted outside the United States (as defined in section 7701(a)(9)) cannot constitute qualified research. Thus, wages paid to an employee scientist for services performed in a laboratory in the United States and in a test station in Antarctica must be apportioned between the services performed within the United States and the services performed outside the United States, and only the wages apportioned to the services conducted within the United States are qualified research expenses unless the 80 percent rule of § 1.41-2(d)(2) applies.

(2) *Contract research.* If contract research is performed partly within the United States and partly without, only 65 percent of the portion of the contract amount that is attributable to the research performed within the United States can qualify as contract research expense (even if 80 percent or more of the contract amount was for research performed in the United States).

(c) *Social sciences or humanities.* Qualified research does not include research in the social sciences or humanities. For purposes of section 30(d)(2) (as that section read before amendment by the Tax Reform Act of 1986) and of this section, the phrase "research in the social sciences or humanities" encompasses all areas of research other than research in a field of laboratory science (such as physics or biochemistry), engineering or technology. Examples of research in the social sciences or humanities include the development of a new life insurance contract, a new economic model or theory, a new accounting procedure or a new cookbook.

(d) *Research funded by any grant, contract, or otherwise*—(1) *In general.* Research does not constitute qualified research to the extent it is funded by any grant, contract, or otherwise by another person (including any governmental entity). All agreements (not only research contracts) entered into between the taxpayer performing the research and other persons shall be considered in determining the extent to which the research is funded. Amounts payable under any agreement that are contingent on the success of the research and thus considered to be paid for the product or result of the research (see § 1.41-2(e)(2)) are not treated as

funding. For special rules regarding funding between commonly controlled businesses, see § 1.41–8(e).

(2) *Research in which taxpayer retains no rights.* If a taxpayer performing research for another person retains no substantial rights in research under the agreement providing for the research, the research is treated as fully funded for purposes of section 41(d)(4)(H), and no expenses paid or incurred by the taxpayer in performing the research are qualified research expenses. For example, if the taxpayer performs research under an agreement that confers on another person the exclusive right to exploit the results of the research, the taxpayer is not performing qualified research because the research is treated as fully funded under this paragraph (d)(2). Incidental benefits to the taxpayer from performance of the research (for example, increased experience in a field of research) do not constitute substantial rights in the research. If a taxpayer performing research for another person retains no substantial rights in the research and if the payments to the researcher are contingent upon the success of the research, neither the performer nor the person paying for the research is entitled to treat any portion of the expenditures as qualified research expenditures.

(3) *Research in which the taxpayer retains substantial rights*—(i) *In general.* If a taxpayer performing research for another person retains substantial rights in the research under the agreement providing for the research, the research is funded to the extent of the payments (and fair market value of any property) to which the taxpayer becomes entitled by performing the research. A taxpayer does not retain substantial rights in the research if the taxpayer must pay for the right to use the results of the research. Except as otherwise provided in paragraph (d)(3)(ii) of this section, the taxpayer shall reduce the amount paid or incurred by the taxpayer for the research that would, but for section 41(d)(4)(H), constitute qualified research expenses of the taxpayer by the amount of funding determined under the preceding sentence.

(ii) *Pro rata allocation.* If the taxpayer can establish to the satisfaction of the district director—

(A) The total amount of research expenses,

(B) That the total amount of research expenses exceed the funding, and

(C) That the otherwise qualified research expenses (that is, the expenses which would be qualified research expenses if there were no funding) exceed 65 percent of the funding, then the taxpayer may allocate the funding pro rata to nonqualified and otherwise qualified research expenses, rather than allocating it 100 percent to otherwise qualified research expenses (as provided in paragraph (d)(3)(i) of this section). In no event, however, shall less than 65 percent of the funding be applied against the otherwise qualified research expenses.

(iii) *Project-by-project determination.* The provisions of this paragraph (d)(3) shall be applied separately to each research project undertaken by the taxpayer.

(4) *Independent research and development under the Federal Acquisition Regulations System and similar provisions.* The Federal Acquisition Regulations System and similar rules and regulations relating to contracts (fixed price, cost plus, etc.) with government entities provide for allocation of certain "independent research and development costs" and "bid and proposal costs" of a contractor to contracts entered into with that contractor. In general, any "independent research and development costs" and "bid and proposal costs" paid to a taxpayer by reason of such a contract shall not be treated as funding the underlying research activities except to the extent the "independent research and development costs" and "bid and proposal costs" are properly severable from the contract. See § 1.451–3(e); see also section 804(d)(2) of the Tax Reform Act of 1986.

(5) *Funding determinable only in subsequent taxable year.* If at the time the taxpayer files its return for a taxable year, it is impossible to determine to what extent particular research performed by the taxpayer during that year may be funded, then the taxpayer shall treat the research as completely funded for purposes of completing that return. When the amount of funding is finally determined, the taxpayer should amend the return and any interim returns to reflect the proper amount of funding.

(6) *Examples.* The following examples illustrate the application of the principles contained in this paragraph.

*Example (1).* A enters into a contract with B Corporation, a cash-method taxpayer using the calendar year as its taxable year, under which B is to perform research that would, but for section 41(d)(3)(H), be qualified research of B. The agreement calls for A to pay B $120x, regardless of the outcome of the research. In 1982, A makes full payment of $120x under the contract, B performs all the research, and B pays all the expenses connected with the research, as follows:

| | |
|---|---|
| In-house research expenses | $100x |
| Outside research: | |
| (Amount B paid to third parties for research, 65 percent of which ($26x) is treated as a contract research expense of B) | 40x |
| Overhead and other expenses | 10x |
| Total | 150x |

If B has no rights to the research, B is fully funded. Alternatively, assume that B retains the right to use the results of the research in carrying on B's business. Of B's otherwise qualified research expenses of $126x + $26x), $120x is treated as funded by A. Thus $6x ($126x − $120x) is treated as a qualified research expense of B. However, if B establishes the facts required under paragraph (d)(3) of this section, B can allocate the funding pro rata to nonqualified and otherwise qualified research expenses. Thus $100.8x ($120x ($126x/$150x)) would be allocated to otherwise qualified research expenses. B's qualified research expenses would be $25.2x ($126x − $100.8x). For purposes of the following examples (2), (3) and (4) assume that B retains substantial rights to use the results of the research in carrying on B's business.

*Example (2).* The facts are the same as in example (1) (assuming that B retains the right to use the results of the research in carrying on B's business) except that, although A makes full payment of $120x during 1982, B does not perform the research or pay the associated expenses until 1983. The computations are unchanged. However, B's qualified research expenses determined in example (1) are qualified research expenses during 1983.

*Example (3).* The facts are the same as in example (1) (assuming that B retains the right to use the results of the research in carrying on B's business) except that, although B performs the research and pays the associated expenses during 1982, A does not pay the $120x until 1983. The computations are unchanged and the amount determined in example (1) is a qualified research expense of B during 1982.

*Example (4).* The facts are the same as in example (1) (assuming that B retains the right to use the results of the research in carrying on B's business) except that, instead of agreeing to pay B $120x, A agrees to pay $100x regardless of the outcome and an additional $20x only if B's research produces a useful product. B's research produces a useful product and A pays B $120x during 1982. The $20x payment that is conditional on the success of the research is not treated as funding. Assuming that B establishes to the satisfaction of the district director the actual research expenses, B can allocate the funding to nonqualified and otherwise qualified research expenses. Thus $84x ($100x ($126x/$150x)) would be allocated to otherwise qualified research expenses. B's qualified research expenses would be $42x ($126x − $84x).

*Example (5).* C enters into a contract with D, a cash-method taxpayer using the calendar year as its taxable year, under which D is to perform research in which both C and D will

have substantial rights. C agrees to reimburse D for 80 percent of D's expenses for the research. D performs part of the research in 1982 and the rest in 1983. At the time that D files its return for 1982, D is unable to determine the extent to which the research is funded under the provisions of this paragraph. Under these circumstances, D may not treat any of the expenses paid by D for this research during 1982 as qualified research expenses on its 1982 return. When the project is complete and D can determine the extent of funding, D should file an amended return for 1982 to take into account any qualified research expense for 1982.

**§ 1.41-6 Basic research for taxable years beginning after December 31, 1985.**

[Reserved]

**§ 1.41-7 Basic research for taxable years beginning before January 1, 1986.**

(a) *In general.* The amount expended for basic research within the meaning of section 30(e) (before amended by the Tax Reform Act of 1986) equals the sum of money plus the taxpayer's basis in tangible property (other than land) transferred for use in the performance of basic research.

(b) *Trade or business requirement.* Any amount treated as a contract research expense under section 30(e) (before amendment by the Tax Reform Act of 1986) shall be deemed to have been paid or incurred in carrying on a trade or business, if the corporation that paid or incurred the expenses is actually engaged in carrying on some trade or business.

(c) *Prepaid amounts*—(1) In general. If any basic research expense paid or incurred during any taxable year is attributable to research to be conducted after the close of such taxable year, the expense so attributable shall be treated for purposes of section 30(b)(1)(B) (before amendment by the Tax Reform Act of 1986) as paid or incurred during the period in which the basic research is conducted.

(2) *Transfers of property.* In the case of transfers of property to be used in the performance of basic research, the research in which that property is to be used shall be considered to be conducted ratably over a period beginning on the day the property is first so used and continuing for the number of years provided with respect to property of that class under section 168(c)(2) (before amendment by the Tax Reform Act of 1986). For example, if an item of property which is 3-year property under section 168(c) is transferred to a university for basic research on January 12, 1983, and is first so used by the university on March 1, 1983, then the research in which that property is used is considered to be conducted ratably from March 1, 1983, through February 28, 1986.

(d) *Written research agreement*—(1) *In general.* A written research agreement must be entered into prior to the performance of the basic research.

(2) *Agreement between a corporation and a qualified organization after June 30, 1983*—(i) *In general.* A written research agreement between a corporation and a qualified organization (including a qualified fund) entered into after June 30, 1983, shall provide that the organization shall inform the corporation within 60 days after the close of each taxable year of the corporation what amount of funds provided by the corporation pursuant to the agreement was expended on basic research during the taxable year of the corporation. In determining amounts expended on basic research, the qualified organization shall take into account the exclusions specified in section 30(e)(3) (before amendment by the Tax Reform Act of 1986) and in paragraph (e) of this section.

(ii) *Transfers of property.* In the case of transfers of property to be used in basic research, the agreement shall provide that substantially all use of the property is to be for basic research, as defined in section 30(e)(3) (before amendment by the Tax Reform Act of 1986).

(3) *Agreement between a qualified fund and a qualified educational organization after June 30, 1983.* A written research agreement between a qualified fund and a qualified educational organization (see section 30(e)(4)(B)(iii) (before amendment by the Tax Reform Act of 1986)) entered into after June 30, 1983, shall provide that the qualified educational organization shall furnish sufficient information to the qualified fund to enable the qualified fund to comply with the written research agreements it has entered into with grantor corporations, including the requirement set forth in paragraph (d)(2) of this section.

(e) *Exclusions*—(1) *Research conducted outside the United States.* If a taxpayer pays or incurs an amount for basic research to be performed partly within the United States and partly without, only 65 percent of the portion of the amount attributable to research performed within the United States can be treated as a contract research expense (even if 80 percent or more of the contract amount was for basic research performed in the United States).

(2) *Research in the social sciences or humanities.* Basic research does not include research in the social sciences or humanities, within the meaning of § 1.41-5(c).

(f) *Procedure for making an election to be treated as a qualified fund.* In order to make an election to be treated as a qualified fund within the meaning of section 30(e)(4)(B)(iii) (before amendment by the Tax Reform Act of 1986) or as an organization described in section 41(e)(6)(D), the organization shall file with the Internal Revenue Service center with which it files its annual return a statement that—

(1) Sets out the name, address, and taxpayer identification number of the electing organization (the "taxpayer") and of the organization that established and maintains the electing organization (the "controlling organization"),

(2) Identifies the election as an election under section 41(e)(6)(D) of the Code,

(3) Affirms that the controlling organization and the taxpayer are section 501(c)(3) organizations,

(4) Provides that the taxpayer elects to be treated as a private foundation for all Code purposes other than section 4940,

(5) Affirms that the taxpayer satisfies the requirement of section 41(e)(6)(D)(iii), and

(6) Specifies the date on which the election is to become effective.

If an election to be treated as a qualified fund is filed before February 1, 1982, the election may be made effective as of any date after June 30, 1981, and before January 1, 1986. If an election is filed on or after February 1, 1982, the election may be made effective as of any date on or after the date on which the election is filed.

**§ 1.41-8 Aggregation of expenditures.**

(a) *Controlled group of corporations; trades or businesses under common control*—(1) *In general.* In determining the amount of research credit allowed with respect to a trade or business that at the end of its taxable year is a member of a controlled group of corporations or a member of a group of trades or businesses under common control, all members of the group are treated as a single taxpayer and the credit (if any) allowed to the member is determined on the basis of its proportionate share (if any) of the increase in qualified research expenses of the aggregated group.

(2) *Definition of trade or business.* For purposes of this section, a trade or business is a sole proprietorship, a partnership, a trust, an estate, or a corporation that is carrying on a trade or business (within the meaning of section 162). For purposes of this section, any corporation that is a member of a

commonly controlled group shall be deemed to be carrying on a trade or business if any other member of that group is carrying on any trade or business.

(3) *Determination of common control.* For rules for determining whether trades or businesses are under common control, see paragraphs (b)–(g) of § 1.52–1 except that the words "singly or" in § 1.52–1(d)(1)(i) shall be treated as deleted.

(4) *Examples.* The following examples illustrate provisions of this paragraph.

*Example (1).* (i) *Facts.* A controlled group of four corporations (all of which are calendar-year taxpayers) had qualified research expenses ("research expenses") during the base period and taxable year as follows:

| Corporation | Base period (average) | Taxable year | Change |
|---|---|---|---|
| A | $60 | $40 | ($20) |
| B | 10 | 15 | 5 |
| C | 30 | 70 | 40 |
| D | 15 | 25 | 10 |

(ii) *Total credit.* Because the research expenses of the four corporations are treated as if made by one taxpayer, the total amount of incremental expenses eligible for the credit is $35 ($55 increase attributable to B, C, and D less $20 decrease attributable to A). The total amount of credit allowable to members of the group is 20% of the incremental amount or $7.00.

(iii) *Allocation of credit.* No amount of credit is allocated to A since A's research expenses did not increase in the taxable year. The $7.00 credit is allocated to B, C, and D, the members of the group that increased their research expenses. This allocation is made on the basis of the ratio of each corporation's increase in its research expenses to the sum of increases in those expenses. Inasmuch as the total increase made by those members of the group whose research expenses rose (B, C, and D) was $55, B's share of the $7.00 credit is 5/55; C's share is 40/55; and D's share is 10/55.

*Example (2).* The facts are the same as in example (1) except that A had zero research expenses in the taxable year. Thus, the controlled group had a decrease rather than an increase in aggregate research expenses. Accordingly, no amount of credit is allowable to any member of the group even though B, C, and D actually increased their research expenses in comparison with their own base period expenses.

(b) *Minimum base period research expenses.* For purposes of this section, the rule in section 41(c)(3) (pertaining to minimum base period research expenses) shall be applied only to the aggregate amount of base period research expenses. See the treatment of corporation C in example (1) of paragraph (a)(4) of this section.

(c) *Tax accounting periods used*—(1) *In general.* The credit allowable to a member of a controlled group of corporations or of a group of trades or businesses under common control is that member's share of the aggregate credit computed as of the end of such member's taxable year. In computing the aggregate credit in the case of a group whose members have different taxable years, a member shall generally treat the taxable year of another member that ends with or within the determination year of the computing member as the determination year of that other member. The base period research expenses taken into account with respect to a determination year of another member shall be the base period research expenses determined for that year under § 1.41–3, except that § 1.41–3(c)(2) shall be applied only at the aggregate level.

(2) *Special rule where timing of research is manipulated.* If the timing of research by members using different tax accounting periods is manipulated to generate a credit in excess of the amount that would be allowable if all members of the group used the same tax accounting period, the district director may require each member of the group to calculate the credit in the current taxable year and all future years as if all members of the group had the same taxable year and base period as the computing member.

(d) *Membership during taxable year in more than one group.* A trade or business may be a member of only one group for a taxable year. If, without application of this paragraph, a business would be a member of more than one group at the end of its taxable year, the business shall be treated as a member of the group in which it was included for its preceding taxable year. If the business was not included for its preceding taxable year in any group in which it could be included as of the end of its taxable year, the business shall designate in its timely filed (including extensions) return the group in which it is being included. If the return for a taxable year is due before July 1, 1983, the business may designate its group membership through an amended return for that year filed on or before June 30, 1983. If the business does not so designate, then the district director with audit jurisdiction of the return will determine the group in which the business is to be included.

(e) *Intra-group transactions*—(1) *In general.* Because all members of a group under common control are treated as a single taxpayer for purposes of determining the research credit, transfers between members of the group are generally disregarded.

(2) *In-house research expenses.* If one member of a group performs qualified research on behalf of another member, the member performing the research shall include in its qualified research expenses any in-house research expenses for that work and shall not treat any amount received or accrued as funding the research. Conversely, the member for whom the research is performed shall not treat any part of any amount paid or incurred as a contract research expense. For purposes of determining whether the in-house research for that work is qualified research, the member performing the research shall be treated as carrying on any trade or business carried on by the member on whose behalf the research is performed.

(3) *Contract research expenses.* If a member of a group pays or incurs contract research expenses to a person outside the group in carrying on the member's trade or business, that member shall include those expenses as qualified research expenses. However, if the expenses are not paid or incurred in carrying on any trade or business of that member, those expenses may be taken into account as contract research expenses by another member of the group provided that the other member—

(i) Reimburses the member paying or incurring the expenses, and

(ii) Carries on a trade or business to which the research relates.

(4) *Lease Payments.* The amount paid or incurred to another member of the group for the lease of personal property owned by a member of the group is not taken into account for purposes of section 41. Amounts paid or incurred to another member of the group for the lease of personal property owned by a person outside the group shall be taken into account as in-house research expenses for purposes of section 41 only to the extent of the lesser of—

(i) The amount paid or incurred to the other member, or

(ii) The amount of the lease expenses paid to the person outside the group.

(5) *Payment for supplies.* Amounts paid or incurred to another member of the group for supplies shall be taken into account as in-house research expenses for purposes of section 41 only to the extent of the lesser of—

(i) The amount paid or incurred to the other member, or

(ii) The amount of the other member's basis in the supplies.

**§ 1.41-9 Special rules.**

(a) *Allocations*—(1) *Corporation making an election under subchapter S*—(i) *Pass-through, for taxable years beginning after December 31, 1982, in the case of an S corporation.* In the case of an S corporation (as defined in section 1361) the amount of research credit computed for the corporation shall be allocated to the shareholders according to the provisions of section 1366 and section 1377.

(ii) *Pass-through, for taxable years beginning before January 1, 1983, in the case of a subchapter S corporation.* In the case of an electing small business corporation (as defined in section 1371 as that section read before the amendments made by the Subchapter S Revision Act of 1982), the amount of the research credit computed for the corporation for any taxable year shall be apportioned pro rata among the persons who are shareholders of the corporation on the last day of the corporation's taxable year.

(2) *Pass-through in the case of an estate or trust.* In the case of an estate or trust, the amount of the research credit computed for the estate or trust for any taxable year shall be apportioned among the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(3) *Pass-through in the case of a partnership*—(i) *In general.* In the case of a partnership, the research credit computed for the partnership for any taxable year shall be apportioned among the persons who are partners during the taxable year in accordance with section 704 and the regulations thereunder. See, for example, § 1.704-1(b)(4)(ii). Because the research credit is an expenditure-based credit, the credit is to be allocated among the partners in the same proportion as section 174 expenditures are allocated for the year.

(ii) *Certain expenditures by joint ventures.* Research expenses to which § 1.41-2(a)(4)(ii) applies shall be apportioned among the persons who are partners during the taxable year in accordance with the provisions of that section. For purposes of section 41, these expenses shall be treated as paid or incurred directly by the partners rather than by the partnership. Thus, the partnership shall disregard these expenses in computing the credit to be apportioned under paragraph (a)(3)(i) of this section, and in making the computations under section 41 each partner shall aggregate its distributive share of these expenses with other research expenses of the partner. The limitation on the amount of the credit set out in section 41(g) and in paragraph (c) of this section shall not apply because the credit is computed by the partner, not the partnership.

(4) *Year in which taken into account.* An amount apportioned to a person under this paragraph shall be taken into account by the person in the taxable year of such person which or within which the taxable year of the corporation, estate, trust, or partnership (as the case may be) ends.

(5) *Credit allowed subject to limitation.* The credit allowable to any person to whom any amount has been apportioned under paragraph (a)(1), (2) or (3)(i) of this section is subject to section 41(g) and sections 38 and 39 of the Code, if applicable.

(b) *Adjustments for certain acquisitions and dispositions—Meaning of terms.* For the meaning of "acquisition," "separate unit," and "major portion," see paragraph (b) of § 1.52-2. An "acquisition" includes an incorporation or a liquidation.

(c) *Special rule for pass-through of credit.* The special rule contained in section 41(g) for the pass-through of the credit in the case of an individual who owns an interest in an unincorporated trade or business, is a partner in a partnership, is a beneficiary of an estate or trust, or is a shareholder in an S corporation shall be applied in accordance with the principles set forth in § 1.53-3.

(d) *Carryback and carryover of unused credits.* The taxpayer to whom the credit is passed through under paragraph (c) of this section shall not be prevented from applying the unused portion in a carryback or carryover year merely because the entity that earned the credit changes its form of conducting business.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved: April 6, 1989.

**John G. Wilkins,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 89-10887 Filed 5-16-89; 8:45 am]

BILLING CODE 4830-01-M

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## 31 CFR Part 103

## Bank Secrecy Act; Administrative Rulings

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Final rule.

**SUMMARY:** Treasury is revising the Appendix to 31 CFR Part 103 to list a new administrative ruling. Copies of administrative rulings may be obtained by contacting the Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement).

**EFFECTIVE DATE:** BSA Ruling 89-1 was effective January 12, 1989.

**ADDRESS:** Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Amy Rudnick, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, 202-566-8022.

**SUPPLEMENTARY INFORMATION:** The Bank Secrecy Act, Pub. L. 91-508 (codified at 12 U.S.C. 1730d, 1829b, 1951-1959, and 31 U.S.C. 5311-5326), authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory matters. The regulations implementing the Bank Secrecy Act are at Part 103 of Title 31 of the Code of Federal Regulations. On September 22, 1987, Treasury issued final regulations implementing an administrative ruling system for interpretations of the Bank Secrecy Act. 52 FR 35545. Administrative rulings are published in the Appendix to Part 103. The administrative rulings are effective when signed. Publication in the **Federal Register** is merely a method of publicizing their existence.

One ruling is being added to the Appendix by this Final Rule. BSA Ruling 89-1 deals with the granting of a special exemption for a group of accounts belonging to the same customer.

Copies of rulings may be obtained by contacting the Office of Financial Enforcement at the address listed above. Please make all requests for rulings in writing, specifying the relevant number or subject of the ruling.

### Applicability of Notice and Effective Date Requirements

This amendment merely revises the appendix to add the text of an issued administrative ruling that interprets the Bank Secrecy Act regulations. The regulations in Part 103 are not amended in any way. Therefore, for good cause found, pursuant to 5 U.S.C. 553(b) and (d), notice and public procedure thereon are unnecessary.

**Executive Order 12291**

As this final rule promulgates a regulation dealing solely with issues of agency management and organization, compliance with Executive Order 12291 and a regulatory impact analysis are not required.

**Regulatory Flexibility Act**

As no Notice of Proposed Rulemaking is required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or by any other statute, this document is not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 603 and 604.

**Drafting Information**

The principal author of this document is the Office of Financial Enforcement. However, personnel from other offices participated in its development.

**List of Subjects in 31 CFR Part 103**

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law Enforcement, Reporting and recordkeeping requirements, Taxes.

**Amendment**

For reasons set forth in the preamble, 31 CFR Part 103 is amended as set forth below:

## PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

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

**Authority:** Pub. L. 91–508, Title I, 84 Stat. 1114 (12 U.S.C. 1730d, 1829b and 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5326).

2. The Appendix to 31 CFR Part 103 is amended by adding at the end the following:

**Appendix—Administrative Rulings**

* * * * *

*89–1 (January 12, 1989)*

Issue

Under § 103.22 of the BSA regulations, may a bank unilaterally grant one exemption or establish a single dollar exemption limit for a group of existing accounts of the same customer? If not, may a bank obtain additional authority from the IRS to grant a single exemption for a group of exemptible accounts belonging to the same customer?

Facts

ABC Inc. ("ABC"), with TIN 12–3456789, owns five fast food restaurants. Each restaurant has its own account at the X State Bank and each restaurant routinely deposits less than $10,000 into its individual account. However, when the deposits into these five accounts are aggregated they regularly and frequently exceed $10,000. Accordingly, the bank prepares and files one CTR for ABC Inc., on each business day that ABC's aggregated currency transactions exceed $10,000. X State Bank wants to know whether it can unilaterally exempt these five accounts having the same TIN, and, if not, whether it can obtain additional authority from the IRS to grant a single exemption to the group of five accounts belonging to ABC.

Law and Analysis

Under § 103.22(b)(2) (i) and (ii) of the Bank Secrecy Act ("BSA") regulations, 31 CFR Part 103, only an individual account of a customer may be unilaterally exempted from the currency transaction reporting provisions. The bank may not unilaterally grant one exemption or establish a single dollar exemption limit for multiple accounts of the same customer. This is because §§ 103.22(b)(2)(i) and 103.22(b)(2)(ii) of the BSA regulations only permit a bank to unilaterally exempt "[d]eposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a retail type of business in the United States." 31 CFR 103.22(b)(2) (i) and (ii).

Section 103.22(e) of the BSA regulations provides, however, that "[a] bank may apply to the * * * [IRS] for additional authority to grant exemptions to the reporting requirements not otherwise permitted under paragraph (b) of this section * * *" 31 CFR 103.22(e). Therefore, under this authority, and at the request of a bank, the IRS may, in its discretion, grant the requesting bank additional authority to exempt a group of accounts when the following conditions are met:

(1) Each of the accounts in the group is owned by the same person and has the same taxpayer identification number.

(2) The deposits or withdrawals into each account are made by a customer that operates a business that may be either unilaterally or specially exemptible and each account meets the other exemption criteria (except for the dollar amount).

(3) Currency transactions for each account individually do not exceed $10,000 on a regular and frequent basis.

(4) Aggregated currency transactions for all accounts included in the group regularly and frequently exceed $10,000.

If a bank determines that an exemption would be appropriate in a situation involving a group of accounts belonging to a single customer, it must apply to the IRS for authority to grant one special exemption covering the accounts in question. As with all requests for special exemptions, any request for additional authority to grant a special exemption must be made in writing and accompanied by a statement of the circumstances that warrant special exemption treatment and a copy of the statement signed by the customer as required by § 103.22(d), 31 CFR 103.22(d).

Additional authority to grant a special exemption for a group of accounts must be obtained from the IRS regardless of whether the businesses may be unilaterally exempted under § 103.22(b)(2), because the exemption, if granted, would apply to a group of existing accounts as opposed to an individual existing account. 31 CFR 103.22(b)(2).

Also, if any one of a given customer's accounts has regular and frequent currency transactions which exceed $10,000, that account may not be included in the group exemption. This is because the bank may, as provided by § 103.22(b)(2), either unilaterally exempt that account or obtain authority from the IRS to grant a special exemption for that account if it meets the other criteria for exemption. Thus, only accounts of exemptible businesses which do not have regular and frequent (*e.g.*, daily, weekly or twice a month) currency transactions in excess of $10,000 may be eligible for a group exemption.

The intention of this special exemption is to permit banks to exempt the accounts of established customers, such as the ABC Inc. restaurants described above, which are owned by the same person and have the same TIN but which individually do not have sufficient currency deposit or withdrawal activity that regularly and frequently exceed $10,000.

Holding

If X State Bank determines that an exemption would be appropriate for ABC Inc., it must apply to the IRS for authority to grant one special exemption covering ABC's five separate accounts. As with all requests for special exemptions, ABC's request for additional authority to grant a special exemption must be made in writing and accompanied by a statement of the circumstances that warrant special exemption treatment and a copy of the statement signed by the customer as required by § 103.22(d), 31 CFR 103.22(d). The IRS may, in its discretion, grant additional authority to exempt the ABC accounts if: (1) They have the same taxpayer identification number; (2) they each are for customers that operate a business that may be either unilaterally or specially exemptible and each account meets the other exemption criteria (except for dollar amount); (3) the currency transactions for each account individually do not exceed $10,000 on a regular and frequent basis; but (4) when aggregated the currency transactions for all the accounts regularly and frequently do exceed $10,000.

Dated: April 24, 1989.

**Michael L. Williams,**

*Deputy Assistant Secretary ( Law Enforcement).*

[FR Doc. 89–11755 Filed 5–16–89; 8:45 am]

BILLING CODE 4810–25–M

## DEPARTMENT OF VETERANS AFFAIRS

**38 CFR Part 21**

**RIN 2900–AB89**

### Employment Services for Certain Eligible Veterans

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final regulatory amendments.

**SUMMARY:** The purpose of these amendments is to make clear that the Department of Veterans Affairs (VA) is empowered to furnish employment assistance to help a veteran already qualified for suitable employment obtain or maintain suitable employment if he or she is otherwise eligible for assistance under this program. These final regulatory amendments clarify this point.

**EFFECTIVE DATE:** This regulation is effective May 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service (226), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2886.

**SUPPLEMENTARY INFORMATION:** At pages 2855 through 2857 of the **Federal Register** of February 2, 1988, VA published proposed regulatory amendments to clarify VA's authority to assist those service-disabled veterans with an employment handicap or serious employment handicap who have problems in obtaining or maintaining suitable employment, but who do not require training assistance to achieve such employment. Interested persons were given 30 days in which to submit their comments, suggestions, or objections to the proposed regulatory amendments. While we did not receive any written comments or objections, two persons informally offered the same suggestion. The suggestion which these commenters made informally is intended to clarify requirements for receiving employment services under § 21.47(b).

Under the vocational rehabilitation program, VA must make a specific finding of entitlement to assistance in each case before services may be authorized. The commenters pointed out that a finding of employment handicap is required in two of the three paragraphs in § 21.47 in which eligibility and entitlement to employment services is presented, but there is no such stipulation in § 21.47(b) concerning the eligibility of veterans who have previously participated in a vocational rehabilitation program. We agree that the omission of a specific statement regarding this requirement could be erroneously interpreted as meaning that employment services could be provided even if the veteran was not found to have an employment handicap. Therefore § 21.47(b) has been changed to state that a finding of employment handicap is required in order to avoid any misunderstanding on this point.

Since the publication of the proposed rule, the Veterans Administration has become the Department of Veterans Affairs, effective March 15, 1989. Those places in the proposed regulations which required updating of the nomenclature have been updated.

The proposed rule, as amended herein, is adopted. We appreciate the interest expressed by each commenter.

These final amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. These final amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Secretary certifies that these final amendments 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), these amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of Sections 603 and 604. The reason for this certification is that these final amendments concern the rights and responsibilities of individual VA beneficiaries under 38 U.S.C. Chapter 31. Thus, no regulatory burdens are imposed on small entities by these changes.

The Catalog of Federal Domestic Assistance Number is 64.116.

**List of Subjects in 38 CFR Part 21**

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

Approved: April 25, 1989.

**Edward J. Derwinski,**

*Secretary of Veterans Affairs.*

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

## PART 21—[AMENDED]

1. Section 21.47 is revised to read as follows:

**§ 21.47 Eligibility for Employment Assistance.**

(a) *Providing employment services to veterans eligible for a rehabilitation program under chapter 31.* Each veteran, other than one found in need of a program of independent living services and assistance, who is otherwise currently eligible for and entitled to participate in a program of rehabilitation under chapter 31 may receive employment services. Included are those veterans who:

(1) Have completed a program of rehabilitation services under chapter 31 and been declared rehabilitated to the point of employability;

(2) Have not completed a period of rehabilitation to the point of employability under chapter 31, but:

(i) Have elected to secure employment without completing the period of rehabilitation to the point of employability; and

(ii) Are employable; or

(3) Have never received services for rehabilitation to the point of employability under chapter 31 if they:

(i) Are employable or employed in a suitable occupation;

(ii) Have an employment handicap or a serious employment handicap; and

(iii) Need employment services to secure and/or maintain suitable employment.

(Authority: 38 U.S.C. 1502)

(b) *Veteran previously participated in a VA vocational rehabilitation program or a similar program under the Rehabilitation Act of 1973, as amended.* A veteran who at some time in the past has participated in a vocational rehabilitation program under chapter 31 or a similar program under the Rehabilitation Act of 1973 as amended, and is employable is eligible for employment services under the following conditions even though he or she is ineligible for any other assistance under chapter 31:

(1) The veteran is employable in a suitable occupation;

(2) The veteran has filed a claim for vocational rehabilitation or employment assistance;

(3) The veteran has a service-connected disability which:

(i) Was incurred on or after September 16, 1940; and

(ii) Is compensable, but for payment or retired pay; and

(4) The veteran has an employment handicap or serious employment handicap; and

(5) The veteran:

(i) Completed a vocational rehabilitation program under 38 U.S.C. ch. 31 or participated in such a program for at least 90 days on or after September 16, 1940; or

(ii) Completed a vocational rehabilitation program under the Rehabilitation Act of 1973 after September 26, 1975, or participated in such a program which included at least

90 days of postsecondary education or vocational training.

(Authority: 38 U.S.C. 1517)

(c) *Veteran never received vocational rehabilitation services from the Department of Veterans Affairs or under the Rehabilitation Act of 1973.* If a veteran is currently ineligible under chapter 31 because he or she does not have an employment handicap, and has never before participated in a vocational rehabilitation program under chapter 31 or under the Rehabilitation Act of 1973, no employment assistance may now be provided to the veteran under chapter 31.

(Authority: 38 U.S.C. 1517)

(d) *Duration of period of employment assistance.* The periods during which employment assistance may be provided are not subject to limitations on periods of eligibility for vocational rehabilitation provided in §§ 21.41 through 21.45 of this part, but entitlement to such assistance is, as provided in § 21.73 of this part, limited to 18 total months of assistance.

(Authority: 38 U.S.C. 1505)

2. In § 21.51, paragraphs (f)(1) (i) and (iii) and (f)(2) (i) and (iii) are revised to read as follows:

**§ 21.51 Employment handicap.**

* * * * *

(f) *Determinations of employment handicap.*

(1) * * *

(i) The veteran has an impairment of employability; this includes veterans who are qualified for suitable employment, but do not obtain or retain such employment for reasons not within their control;

* * * * *

(iii) The veteran has not overcome the effects of the impairment of employability through employment in an occupation consistent with his or her pattern of abilities, aptitudes and interests.

(2) * * *

(i) The veteran's employability is not impaired; this includes veterans who are qualified for suitable employment, but do not obtain or retain such employment for reasons within their control;

* * * * *

(iii) The veteran has overcome the effects of the impairment of employability through employment in an occupation consistent with his or her pattern of abilities, aptitudes and interests, and is successfully maintaining such employment.

(Authority: 38 U.S.C. 1502)

3. In § 21.73, paragraph (a) is revised to read as follows:

**§ 21.73 Duration of employment assistance programs.**

(a) *Duration.* Employment assistance may be provided to the veteran for the period necessary to enable the veteran to secure employment in a suitable occupation, and to adjust in the employment. This period shall not exceed 18 months. A veteran may be provided such assistance if he or she is eligible for employment assistance under the provisions of § 21.47 of this part.

(Authority: 38 U.S.C. 1505(b)).

* * * * *

4. In § 21.250, paragraph (b)(3) is added and paragraphs (c) (1) and (2) are revised to read as follows:

**§ 21.250 Overview of employment services.**

* * * * *

(b) * * *

(3) The term "employable" means the veteran is able to secure and maintain employment in the competitive labor market or in a sheltered workshop or other special situation at the minimum wage.

(Authority: 38 U.S.C. 1501, 1506, 1516, 1517)

(c) *Determining eligibility for, and the extent of, employment services.*

(1) A veteran's eligibility for employment services shall be determined under the provisions of § 21.47;

(2) The duration of the period of employment services is determined under provisions of § 21.73;

* * * * *

[FR Doc. 89-11740 Filed 5-16-89; 8:45 am]

BILLING CODE 8320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[FRL-3571-3]

### Designation of Areas for Air Quality Planning Purposes; Ohio

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

**ACTION:** Notice of final rulemaking.

**SUMMARY:** This notice takes action on the attainment status designation for six counties in Ohio relative to the former total suspended particulate (TSP) National Ambient Air Quality Standards (NAAQS). For the six counties (Gallia, Jefferson, Lake, Muskingum, Richland and Washington), USEPA is redesignating the counties to full attainment or reducing the size of the nonattainment area(s).

**DATE:** This final rulemaking becomes effective June 16, 1989.

**ADDRESSES:** Copies of the redesignation request and supporting air quality data are available at the following addresses:

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

**FOR FURTHER INFORMATION CONTACT:** Delores Sieja, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

**SUPPLEMENTARY INFORMATION:** The Clean Air Act Amendments of 1977 added section 107(d) to the Clean Air Act (the Act). This section directed each State to submit, to the Administrator of USEPA, a list of the attainment status for all areas within the State. The Administrator was required to promulgate the State lists, modified as necessary. He did so on March 3, 1978 (43 FR 8962), and made necessary amendments on October 5, 1978 (43 FR 45993). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

One pollutant for which USEPA published area designations was TSP. The TSP designations were based upon violations of the NAAQS developed for TSP by USEPA. The primary TSP MAAQS was violated when, in a year, either: (1) The geometric mean value of TSP concentrations exceeded 75 micrograms per cubic meter of air ($\mu g/m^3$) (the annual primary standard); or (2) the 24-hour concentration of TSP exceeded 260 $\mu g/m^3$ more than once (the 24-hour primary standard). The secondary TSP NAAQS was violated when, in a year, the 24-hour concentration exceeded 150 $\mu g/m^3$ more than once.

USEPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers or less ($PM_{10}$). However, USEPA will continue to process redesignations of areas from nonattainment to attainment or unclassifiable for TSP in keeping with past policy because various regulatory provisions such as new source review and prevention of significant

deterioration (PSD) are keyed to the attainment status of areas. The July 1, 1987, notice further (52 FR 24682) described USEPA's transition policy regarding TSP redesignations.

USEPA's criteria for supportable redesignation requests, as they pertain to TSP, are discussed most recently in the following memorandum:

• September 30, 1985, from Gerald Emison, Director, Office of Air Quality Planning and Standards (OAQPS), to the Regional Air Division Directors entitled "Total Suspended Particulate (TSP) Redesignations."

On May 16, 1983, the State of Ohio submitted a request to revise the attainment status designation relative to the former TSP NAAQS for Gallia, Jefferson, Lake, Muskingum, Richland and Washington counties, among others. Because of a lack of sufficient technical support data in this submittal, the State in various correspondence submitted additional data for these six counties. To meet the requirements of USEPA's July 8, 1985 (50 FR 27892) revised stack height regulations, in a May 30, 1986, letter, the State discussed the impact of tall stacks or other illegal dispersion techniques under section 123 of the Act in the six counties. Therefore, based upon the review of all the technical support data, USEPA on October 23, 1987 (52 FR 39665), proposed to change the attainment status designations for Gallia, Jefferson, Lake, Muskingum, Richland and Washington Counties.

Interested parties were given until November 23, 1987, to submit comments on the October 23, 1987, proposed redesignation. Public comments were received from the Ohio Environmental Protection Agency (OEPA), Cyclops Corporation and Elkem Metals Corporation. This notice will be segmented into the following three sections: (I) USEPA's Proposed Action (includes present and requested designation), (II) Public Comments Received, and (III) USEPA's Final Action.

## I. USEPA's Proposed Action

A. Gallia

1. *Present designation* (40 CFR 81.336)
   Secondary Nonattainment—Entire County.
2. *Requested designation* (May 16, 1983)
   Attainment—Entire County.
3. *Proposed Action* (October 23, 1987)
   Same as the State requested.

B. Jefferson

1. *Present designation* (40 CFR 81.336)
   Primary Nonattainment—Cities of Stratton, Empire, Toronto, Winterville, Steubenville, Mingo Junction, New Alexandria, Brilliant, Rayland, Tiltonville, and Yorkville; Townships of Saline, Knox, Island Creek, Cross Creek, Steubenville, Wells, and Warren.
   Attainment—Springfield Township.
   Secondary Nonattainment—Remainder of County.
2. *Requested designation* (November 27, 1984)
   Primary Nonattainment—Cities of Stratton, Empire, Toronto, Winterville, Steubenville, Mingo Junction, New Alexandria, and Brilliant; Townships of Knox, Island Creek, Cross Creek, Wells, Steubenville, and Saline.
   Attainment—Remainder of County.
3. *Proposed Action* (October 23, 1987)
   Same as the State requested.

C. Lake

1. *Present designation* (40 CFR 81.336)
   Primary Nonattainment—City of Painesville.
   Secondary Nonattainment—Area #1—Leroy Township, Area #2—NORTH: County Line, WEST: County Line, SOUTH: I–90, EAST: S.R. 306, excluding Town of Willowick, Area #3—Painesville Township, excluding Fairport Harbor, Grand River, and area within Painesville Township north and west of Fairport Harbor and Grand River.
   Attainment—Remainder of County.
2. *Requested designation* (November 27, 1984)
   Attainment—Entire County.
3. *Proposed Action* (October 23, 1987)
   Same as the State requested.

D. Muskingum

1. *Present designation*
   Secondary Nonattainment—Entire County.
2. *Requested designation*
   Attainment—Entire County.
3. *Proposed Action* (October 23, 1987)
   Same as the State requested.

E. Richland

1. *Present designation* (40 CFR 81.336)
   Primary Nonattainment—Entire County.
2. *Requested designation* (May 16, 1983)
   Primary Nonattainment—Area within a line from West 4th Street and Bowman Street, east on 4th Street to U.S. 42, northeast on 9th Avenue, north to Grace Street, west to Newman Avenue, north to U.S. 30, west to Bowman Street, south to 4th Street.
   Secondary Nonattainment—Remainder of County.
3. *Proposed Action* (October 23, 1987)
   Same as the State requested.

F. Washington

1. *Present designation* (40 CFR 81.336)
   Secondary Nonattainment—Entire County.
2. *Requested designation*
   Attainment—Entire County.
3. *Proposed Action* (October 23, 1987)
   Secondary Nonattainment—Warren Township
   Attainment—Remainder of County.

## II. Public Comments Received

*General Comment*

*Comment:* Both OEPA and Cyclops Corporation question the statutory authority for processing TSP redesignations. This is due to the promulgation of the revised particulate standard (expressed in terms of particulate matter with nominal diameter of 10 micrometers of less ($PM_{10}$)) which consequently eliminated the TSP NAAQS.

*Response:* USEPA acknowledges that with the promulgation of the $PM_{10}$ standard, the TSP NAAQS no longer exists. TSP remains regulated under the Act and USEPA has statutory authority to continue processing TSP redesignations, however, because the statutory prevention of significant deterioration (PSD) increments for particulate matter are still expressed in terms of TSP. Thus, for TSP, PSD requirements will continue to apply in any area which does not have a section 107 nonattainment designation for TSP. 52 FR 24683, col. 3.

In the July 1, 1987 preamble, USEPA also stated that it would continue to accept requests by the States to revise area designations from nonattainment to attainment or unclassifiable. It noted that "[t]he requests will continue to be reviewed during the transition period [prior to approval of the state's $PM_{10}$ control strategy] for compliance with USEPA's redesignation policies as issued in memoranda from the Director of Air Quality Planning and Standards [on] April 21, 1983, and September 30, 1985." 52 FR 24682, col. 1. The Agency also encouraged States to request redesignation of TSP nonattainment areas to unclassifiable at the time they submit their $PM_{10}$ control strategies to USEPA. Once USEPA has approved a control strategy as sufficient to attain and maintain the $PM_{10}$ NAAQS, it will also approve such a redesignation.

USEPA has not approved (nor has Ohio submitted) $PM_{10}$ control strategies for the six counties at issue. Area redesignations for TSP therefore must be reviewed during this transition period according to the policies in the

redesignation memoranda discussed above.

*Lake, Muskingum and Richland Counties*

In the notice of proposed rulemaking (NPR) for Lake, Muskingum and Richland Counties, USEPA requested that OEPA submit evidence that the cited source shutdowns were permanent. USEPA stated that the evidence must be in the form of documentation showing that if these sources were to start up, they would be treated as new sources under Ohio's PSD and new source review permitting requirements.

*Comment:* In response to USEPA's request for documentation, OEPA submitted copies of Ohio's Air Permit System file which lists facilities and sources which have operating permits. This listing documents: the revoked status of the Erie Coke and Chemical Company (Lake County), the Ohio Ferro Alloys Corporation (Muskingum County), Shelby Municipal Light (Richland County), C and P Metals (Richland County), Mansfield Tire and Rubber (Richland County), and Taylor Metal Products (Richland County).

*Response:* It is USEPA's position that the documentation provided by OEPA must meet two requirements: (1) It must show that source shutdowns are permanent, and (2) it must show that if the sources were to start up they would be treated as new sources under Ohio's permitting requirements.

As documentation that source shutdowns are permanent, the OEPA submitted copies of Ohio's Air Permit System file which lists facilities and sources which have operating permits. The applicable sources in Lake, Muskingum and Richland Counties which have had their permits revoked are listed above. USEPA has determined that Ohio's Air Permit System files, which document the permit removals, satisfy the requirement that the source shutdowns occurred more than 2 years ago and, thus, are permanent according to USEPA's definition of permanence.

As documentation that Ohio will consider permanently shutdown sources as new sources if they were to start up, USEPA is relying on two Federal programs, the PSD program (attainment areas) and the nonattainment new source permitting program. In attainment areas, USEPA's PSD program was delegated to Ohio on May 1, 1980. USEPA's policy under this program includes the requirement that a source which has been shutdown would be a new source for PSD purposes, upon reopening, if the shutdown were permanent. USEPA has determined that if the cited sources were to start up in an attainment area, they would be treated as new sources.

USEPA notes that, under the PSD program, emission credits from a permanently shutdown source could be used to allow a major modification to 'net' out of PSD review, but only if emission reductions are contemporaneous with the modification. Emission reductions are defined as contemporaneous, if the prior source was permanently shutdown within 5 years before construction of the new source. In the NPR, the Erie Coke and Chemical Company shutdown (Lake County), where PSD would be applicable (i.e., redesignation to attainment), the shutdown occurred more than 5 years ago. Thus, through the delegation, Ohio must consider this shutdown permanent and not contemporaneous.

In nonattainment areas, USEPA's nonattainment new source review is the controlling program. See section 173 of the Act, 40 CFR 51.165, and Appendix S to 40 CFR Part 51. OEPA has adopted USEPA's Appendix S (40 CFR Part 51) which prohibits the use of emission reductions from shutdown sources as offsets and for netting if the State relied on the reduction in demonstrating attainment (40 CFR Part 51, Subpart I). In today's notice, in Richland County, OEPA has relied upon emission reductions from Shelby Municipal Light Plant, C and P Metals, Mansfield Tire and Rubber Company, and Taylor Metal Products to demonstrate attainment of the primary NAAQS (i.e., justification for redesignation to primary attainment). Thus, a new source or major modification may not use the emission reductions at these sources for offsets or for netting. USEPA has determined that if the cited sources were to start up in Richland County (which is nonattainment), they would be treated as new sources.

*Richland County*

The State requested and, based upon USEPA's review, USEPA proposed to redesignate Richland County as follows:

Primary Nonattainment—Area within a line from West 4th Street and Bowman Street, east on 4th Street to U.S. 42, northeast on 9th Avenue, north to Grace Street, west to Newman Avenue, north to U.S. 30, west to Bowman Street, south to 4th Street.

Secondary Nonattainment—Remainder of County.

*Comment:* OEPA requests that all of Richland County be redesignated to attainment and cited current ambient data which shows attainment. Cyclops Corporation also supports this position.

*Response:* USEPA cannot approve Ohio's November 20, 1987, request to redesignate all of Richland County to attainment because the State did not provide adequate technical support documentation to support its request. Specifically, there are two reasons why all of Richland County cannot be redesignated to attainment. One, the State failed to submit 2 years of violation-free monitoring data in the vicinity of Empire Detroit Steel Company. Empire Detroit Steel is located in the portion of Richland County that is being redesignated to secondary nonattainment. When a monitor was operating in the vicinity of Empire Detroit, the monitor showed secondary non-attainment. Two, for sources in the area that is being retained as primary or secondary nonattainment (i.e., the entire County), the State failed to submit recent allowable and actual emissions and operating rates that show "it is highly unlikely that emission rates will increase significantly at units operating below their allowable emission rates."

*Washington County*

OEPA originally requested the redesignation from secondary nonattainment to attainment for all of Washington County. In the NPR, USEPA proposed to retain Warren Township as secondary nonattainment and redesignate the remainder of Washington County to attainment. The NPR discusses the following two reasons that Warren Township be retained as secondary non-attainment:

(1) The State provided no justification for merged stack credit.

(2) USEPA's screening modeling predicted violations of the secondary TSP NAAQS in the vicinity of Elkem Metals.

*Comment:* Both Elkem Metals Company and OEPA note that the NPR questioned the acceptability of the merged stack credit at Elkem Metals in Warren Township. Further, they indicated that USEPA did approve the credit for stack merging prior to the NPR. Thus, stack merging should not be an issue for retaining Warren Township as secondary nonattainment. Based upon an acceptable credit for stack merging and current ambient air monitoring data, OEPA requests that Warren Township be redesignated to attainment.

*Response:* USEPA reiterates the position found in the NPR that the secondary nonattainment classification should be retained for Warren Township. There are two reasons why Warren Township should not be

redesignated to attainment. Primarily, USEPA's screening modeling predicted violations of the secondary TSP NAAQS in the Warren Township area. Ohio did not provide any information during the public comment period to refute USEPA's modeling analysis. Also, the DC Circuit Court of Appeals remanded portions of USEPA's July 8, 1985, stack height regulations (50 FR 27892), to USEPA on January 22, 1988, *NRDC* v. *Thomas*, 838 F. 2d p. 1224 (1988). One of the remanded issues affects the Elkem Metals Company in Warren Township. This issue is the grandfathering of pre-October 11, 1983, stack height increases between 65 meters and the Good Engineering Practice formula stack height. According to USEPA policy, requests for the redesignation of areas from nonattainment to attainment which are affected by any of the remanded provisions of the stack height regulations will not be acted upon until USEPA has completed any rulemaking necessary to comply with the court's remand. This policy is stated in an April 22, 1988, memorandum entitled "Interim Policy on Stack Height Regulatory Actions" from J. Craig Potter, Assistant Administrator for Air and Radiation, to the Air Division Directors. Elken is affected by the remand because it did raise a stack in 1971. Thus, if the grandfathered stack was the only issue for the redesignation of Warren Township, USEPA would stay action to approve a redesignation. However, the USEPA is not holding the request, but instead is disapproving it for the reasons discussed in the notice of proposed rulemaking i.e., inadequate monitoring data and modeled violations.

USEPA would like to note the following regarding OEPA's comment.

(1) OEPA is correct in indicating that USEPA did approve the credit for stack merging. Due to delays in processing the notice of proposed rulemaking, the notice incorrectly noted that justification was necessary. Note, as discussed above the current remand does effect the appropriate Good Engineering Practice (GEP) stack height at Elkem.

(2) USEPA acknowledges that the current ambient air monitoring data referenced by OEPA does not show violations of the TSP NAAQS. However, because there are no monitors located near the Elkem Metals Plant, these data do not support a redesignation to attainment for Warren Township. (Please see the October 23, 1987, notice for a detailed discussion of the inadequacy of the monitoring network near this major TSP source.)

## III. USEPA's Final Action

### *A. Gallia, Jefferson, Lake and Richland Counties*

For these four counties USEPA's final action is the same as described above under Section I., 3 Proposed Action. We refer you to Section I. for the specific final designation.

### *B. Muskingum and Washington Counties*

On October 23, 1987, USEPA proposed to redesignate all of Muskingum County and nearly all of Washington County (except for Warren Township) from secondary nonattainment to attainment. In both cases, USEPA noted that the monitoring network was deficient. For Muskingum County, USEPA determined that the monitoring network was incomplete because there were no monitors in the southwestern part of the County where a major source, Columbia Cement, is located. The monitoring network in Washington County was inadequate because the only two monitors in the County were not located near two major TSP sources, Muskingum River Power Plant and Elkem Metals plant. As discussed in the notice of proposed rulemaking, the State conducted dispersion modeling and submitted the modeling analysis for the Muskingum River Power Plant and Columbia Cement sources, and USEPA conducted screening modeling for Elkem Metals. In each case, the modeling assumed that the source was emitting TSP at the level allowable under the SIP. For Columbia Cement and the Muskingum River Power Plant, the modeling results indicated that the TSP NAAQS were being attained in the vicinity of the plants; for Elkem Metals plant, the modeling predicted violations of the secondary TSP NAAQS. USEPA, therefore, proposed to redesignate both Counties as attainment, except for Warren Township, where the Elkem Metals plant is located. The Agency proposed to retain the secondary nonattainment designation for Warren Township.

Since the proposal, however, USEPA has learned of new information that has led the Agency to reconsider whether the townships where Columbia Cement (Newton Township) and the Muskingum River Power Plant (Waterford Township) are located may be redesignated to attainment. USEPA believes that both plants have exceeded the emission limitations set forth in the Ohio SIP. USEPA, therefore, has decided not to take final action at this time on Ohio's request to redesignate these two townships. In a separate notice of proposed rulemaking, USEPA intends to (1) withdraw its proposal to redesignate Newton and Waterford Townships as attainment and (2) repropose to retain these two townships as secondary nonattainment.

As a result of today's rulemaking action the designation of Muskingum and Washington Counties is as follows:

Muskingum County
  Secondary Nonattainment—Newton Township
  Attainment—Remainder of the County
Washington County
  Secondary Nonattainment—Warren and Waterford Townships
  Attainment—Remainder of the County

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 July 17, 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 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 9, 1989.

**William K. Reilly,**
*Administrator.*

Part 81 of Chaper I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES—OHIO

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7462.

2. The TSP table in § 81.336 is amended by revising the entries for Gallia, Jefferson, Lake Muskingum, Richland and Washington to read as follows:

§ 81.336 Ohio.

OHIO—TSP

| Designated area | Does not meet primary standards | Does not meet secondary standards | Cannot be classified | Better than national standards |
|---|---|---|---|---|
| Gallia County | | | | X |
| * * * * | * | * | * | |
| Jefferson County: | | | | |
| Cities of Stratton, Empire, Toronto, Wintersville, Steubenville, Mingo Junction, New Alexandria and Brilliant; Townships of Knox, Island Creek, Cross Creek, Wells, Steubenville, and Saline. | X | | | |
| Remainder of County | | | | X |
| Lake County | | | | X |
| * * * * | * | * | * | |
| Muskingum County: | | | | |
| Newton Township | | X | | |
| Remainder of County | | | | X |
| * * * * | * | * | * | |
| Richland County: | | | | |
| The area bounded by a line starting at the intersection of 4th Street and Bowman Street, then east on 4th Street to U.S. 42, northeast on U.S. 42 to 9th Avenue, north on 9th Avenue to Grace Street, west on Grace Street to Neuman Avenue, north on Neuman Avenue to U.S. 30, west on U.S. 30 to Bowman Street, and south on Bowman Street to 4th Street. | X | | | |
| Remainder of County | | X | | |
| * * * * | * | * | * | |
| Washington County: | | | | |
| Warren and Waterford Townships | | X | | |
| Remainder of County | | | | X |
| * * * * | * | * | * | |

[FR Doc. 89-11827 Filed 5-16-89; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 180

[PP 8F3633/R1022; FRL 3569-3]

## Pesticide Tolerance for Methyl-3-[[[[(4-Methoxy-6-Methyl-1,3,5-Triazin-2-yl)Amino]Carbonyl]Amino]Sulfonyl]-2-Thiophenecarboxylate

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a tolerance for residues of the herbicide methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate in or on the raw agricultural commodity (RAC) soybeans at 0.1 part per million (ppm). This regulation was requested by E.I. du Pont de Nemours & Co., Inc., and establishes the maximum permissible level for residues of the herbicide in or on this RAC.

**EFFECTIVE DATE:** May 17, 1989.

**ADDRESS:** Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 2708, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

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

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of October 12, 1988 (53 FR 39784), which announced that E.I. du Pont de Nemours & Co., Inc., Agricultural Products Department, Walker's Mill Building, Barley Mill Plaza, 80038, Wilmington, DE 19898, had filed pesticide petition (PP) 8F3633 proposing to amend 40 CFR 180.439 by establishing a regulation to permit residues of the herbicide methyl 3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino] carbonyl]amino]sulfonyl]-2-thiophenecarboxylate in or on soybeans at 0.1 ppm.

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include several acute studies, a 90-day feeding study with rats fed dosages of 0, 5, 125, and 375 milligrams/kilogram/day (mg/kg/day) with a no-observable-effect level (NOEL) of 5 mg/kg/day; a 13-week feeding study with dogs fed dosages of 0, 1.875, 37.5, and 187.5 mg/kg/day with a NOEL of 37.5 mg/kg/day; a 2-year chronic feeding/oncogenicity study in mice fed dosages of 0, 3.75, 112.5, and 1,125 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to 1,125 mg/kg/day (highest dose tested [HDT]) and a systemic NOEL of 3.75 mg/kg/day; a 2-year chronic feeding/oncogenicity study with rats fed dosages of 0, 1.25, 25, and 125 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to 125 mg/kg/day (HDT) and a systemic NOEL of 1.25 mg/kg/day; a 1-year feeding study with dogs fed dose levels of 0, 125, 18.75, and 187.5 mg/kg/day with a NOEL of 18.75 mg/kg/day; a two-generation reproduction study with rats fed dosages of 0, 1.25, 25, and 125 mg/kg/day with no reproductive effects observed at 125 mg/kg/day (HDT) and a NOEL of 125 mg/kg/day (HDT); a teratology study in rabbits fed dosages of 0, 30, 158, and 511 mg/kg/day with no teratogenic effects occurring at 511 mg/kg/day and a maternal NOEL of 158 mg/kg/day; a teratology study in rats fed dosages of 0, 30, 159, and 725 mg/kg/day with a teratogenic NOEL of 159 mg/kg/, a fetotoxic NOEL of 159 mg/kg/day, and a maternal NOEL greater than 725 mg/kg/day (HDT); and mutagenic studies including a reverse mutation assay (not mutagenic in *Salmonella typhimurium* strains with and without activation), gene mutation (no increase in mutation frequency seen at HDT of 7 mM, the limit of solubility), chromosomal aberration (negative for clastogenic response at 5,000 mg/kg), and DNA

synthesis/rat hepatocytes *in vitro* (material did not induce significant increase in unscheduled synthesis [UDS] in primary cultures).

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 1.25 mg/kg/day and using a hundredfold safety factor) is calculated to be 0.013 mg/kg/day. The TMRC from existing uses is 0.000073 mg/kg body wt/day, which utilizes 0.57 percent of the ADI. The proposed tolerances would increase the TMRC to 0.000107 mg/kg body wt/day, which would utilize a total of 0.83 percent of the ADI.

No desirable data are lacking.

The pesticide is useful for the purpose of this tolerance rule. The nature of the residue is adequately understood for the purpose of establishing this tolerance. Adequate analytical methodology, high-pressure liquid chromatography, is available for enforcement purposes. Because of the long lead-time from establishing this tolerance to publication, the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from:

William Grosse, Chief, Information Services Branch, Program Management and Support Division (H-7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 223, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

There are currently no actions pending against the registration of the chemical. There is no expectation of residue occurring in meat, milk, poultry, or eggs from this tolerance.

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

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

The Office of Management and Budget 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 the 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: April 27, 1989.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR Part 180 is amended as follows:

## PART 180—[AMENDED]

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

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

2. In § 180.439, by adding and alphabetically inserting an entry for the raw agricultural commodity soybeans, to read as follows:

**§ 180.439 Methyl-3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl) amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate; tolerances for residues.**

* * * * *

| Commodities | Parts per million |
|---|---|
| * * * * * | |
| Soybeans | 0.1 |
| * * * * * | |

[FR Doc. 89-11292 Filed 5-16-89; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 88-286; RM-6378]**

### Radio Broadcasting Services; Henderson, TN

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 299A to Henderson, Tennessee, as that community's second local FM service, at the request of Chester County Broadcasting Co., Inc. *See* 53 FR 25352, July 6, 1988. The channel allotment can be made in compliance with the Commission's minimum distance separation requirements of § 73.207. The reference coordinates which are 35-26-24 and 88-38-24. With this action, this proceeding is terminated.

**DATES:** Effective June 19, 1989; The window period for filing applications will open on June 20, 1989, and close on July 20, 1989.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 88-286, adopted April 24, 1989, and released May 4, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio Broadcasting.

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments, is amended under Tennessee, by adding Channel 299A at Henderson.

**Karl A. Kensinger,**

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

[FR Doc. 89-11745 Filed 5-16-89; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 88-271; RM-6357]**

### Radio Broadcasting Services; Farmville, VA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 267A to Farmville, Virginia, as that community's second local FM service, at the request of James H. Dulaney. *See* 53 FR 24967, July 1, 1988. The channel

allotment can be made in compliance with the Commission's minimum distance separation requirements, at coordinates 37–18–00 and 78–23–48. With this action, this proceeding is terminated.

**DATES:** Effective June 19, 1989; the window period for filing applications will open on June 20, 1989, and close on July 20, 1989.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 88–271, adopted April 24, 1989, and released May 4 , 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 contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC. 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments, is amended under Virginia, by adding Channel 267A at Farmville.

**Karl A. Kensinger,**

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

[FR Doc. 89–11746 Filed 5–16–89; 8:45 am]

**BILLING CODE 6712–01–M**

## 47 CFR Part 73

**[MM Docket No. 88–267; RM–6353]**

## Radio Broadcasting Services; Vidalia, LA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 284A to Vidalia, Louisiana, as that community's first local FM service, at the request of John H. Pembroke. *See* 53 FR 24966, July 1, 1988. A site restriction of 1.0 kilometer (0.6 mile) northwest of the community is required, at coordinates 31–34–20 and 91–25–51. With this action, this proceeding is terminated.

**DATES:** Effective June 19, 1989; the window period for filing applications will open on June 20, 1989, and close on July 20, 1989.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 88–267, adopted April 24, 1989, and released May 4, 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 contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments, is amended under Louisiana, by adding Vidalia, Channel 284A.

**Karl A. Kensinger,**

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

[FR Doc. 89–11747 Filed 5–16–89; 8:45 am]

**BILLING CODE 6712–01–M**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 1822 and 1852

## Changes to NASA FAR Supplement on Service Contract Act

**AGENCY:** Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This notice withdraws the final rule on the Service Contract Act published in the **Federal Register** on Wednesday, March 15, 1989 (54 FR 10798–10806, 10809–10813).

**EFFECTIVE DATE:** June 7, 1989.

**FOR FURTHER INFORMATION CONTACT:** W.A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453–8923.

**SUPPLEMENTARY INFORMATION:** .

**Background**

Federal Acquisition Circular 84–46, published in the **Federal Register** May 8, 1989, added Subpart 22.10, Service Contract Act of 1965, as amended, to the Federal Acquisition Regulation (FAR). This addition to FAR makes obsolete and takes precedence over the comparable regulations in the NASA FAR Supplement (NFS). Therefore, the Service Contract Act coverage is deleted from the NFS.

**Impact**

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This proposed regulation falls within the exemption. This deletion will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule imposes no burden within the ambit of the Paperwork Reduction Act of 1980.

**List of Subjects in 48 CFR Parts 1822 and 1852**

Government procurement.

**S.J. Evans,**

*Assistant Administrator for Procurement.*

1. The authority citation for 48 CFR Parts 1822 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

## PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

**Subpart 1822.10 [Removed]**

2. Part 1822 is amended by removing Subpart 1822.10 consisting of sections 1822.1000 through 1822.1051.

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**§§ 1852.222–40, 1852.222–41 and 1852.222–43 [Removed]**

3. Part 1852 is amended by removing sections 1852.222–40, 1852.222–41 and 1852.222–43.

[FR Doc. 89–11888 Filed 5–16–89; 8:45 am]

**BILLING CODE 7510–01–M**

# Proposed Rules

Federal Register
Vol. 54, No. 94
Wednesday, May 17, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Ch. 1

### Issuance of Quarterly Report on the Regulatory Agenda

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of regulatory agenda.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the first quarter, January through March, of 1989. The agenda is issued to provide the public with information about NRC's rulemaking activities. Each issue of the agenda includes information for one quarter of the calendar year. The agenda briefly describes and gives the status for each rule that the NRC is considering, has proposed, or has published with an effective date. It also describes and gives the status of each petition for rulemaking that the NRC is considering.

**ADDRESSES:** A copy of this report, designated NRC Regulatory Agenda (NUREG-0936) Vol. 8, No. 1, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 275–2060 or (202) 275–2171 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–7758, toll-free number (800) 368–5642.

Dated at Bethesda, Maryland, this 8th day of May 1989.

For the Nuclear Regulatory Commission.

**Donnie H. Grimsley,**

*Director, Division of Freedom of Information and Publications Services, Office of Administration.*

[FR Doc. 89–11806 Filed 5–16–89; 8:45 am]

BILLING CODE 7590–01–M

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 701

### Organization and Operations of Federal Credit Unions

**AGENCY:** National Credit Union Administration.

**ACTION:** Proposed rule and interpretive ruling and policy statement—extension of comment period.

**SUMMARY:** On March 17, 1989, the NCUA Board approved a proposed rule and Interpretive Ruling and Policy Statement addressing the entire range of chartering issues. The proposal was published in the **Federal Register** on March 24, 1989 (*see* 54 FR 12221) with a sixty-day comment period ending on May 23, 1989. Due to requests from the credit union industry and the importance of the issues addressed, the Board has decided to extend the comment period from May 12, 1989, to June 23, 1989.

**DATE:** Comments are due on or before June 23, 1989.

**ADDRESS:** Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** H. Allen Carver, Regional Director, Region IV (Chicago), 300 Park Blvd., Suite 155, Itasca, Illinois 60143, or telephone: 312–250–6000.

By the National Credit Union Administration Board on May 10, 1989.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 89–11831 Filed 5–16–89; 8:45 am]

BILLING CODE 7535–01–M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 177

### Foreign Trade Zone Status of Unused Parts

**AGENCY:** U.S. Customs Service, Treasury.

**ACTION:** Proposed interpretative rule; solicitation of public comments.

**SUMMARY:** Customs is reviewing its position regarding the status of any part of foreign origin erroneously included in the dutiable value of an article manufactured in a Foreign Trade Zone (FTZ), but actually not part of the FTZ-manufactured article in its condition as released from the FTZ and entered. In a previous decision, Customs held, in order to accommodate FTZ users, that in these circumstances the user could treat the excluded part as domestic merchandise not subject to further duty when it subsequently left the zone as part of another article manufactured in the zone. Customs further allowed a separate entry to be filed for the part used in place of the excluded part with duty at the same rate as that applicable to the larger manufactured article. This procedure relieves the FTZ user of the obligation of filing an amended entry for the manufactured article and obtaining a refund with respect to the erroneously excluded part and returning the part for accounting purposes to its previous zone status (i.e., the status which requires duty to be paid on an article in its condition when it is entered).

It is proposed to revoke this accommodation because it is no longer consistent with specific provisions of the law and Customs Regulations as they now exist. Further, while it was believed that the position under review would result in no loss of revenue, it is now believed that there is, in fact, a potential for duty-rate avoidance. This document invites comments from interested parties for consideration before any final determination is made.

**DATE:** Comments (preferably in triplicate) must be received on or before July 17, 1989.

**ADDRESS:** Comments should be submitted to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room

2324, 1301 Constitution Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** William G. Rosoff, Commercial Rulings Division (202–566–5856).

**SUPPLEMENTARY INFORMATION:**

### Background

The Customs position under review concerns a situation where a Foreign Trade Zone (FTZ) user erroneously reports a foreign-made part as included within the dutiable value of merchandise manufactured in the FTZ when it is released from the zone and entered for U.S. Customs purposes when, in fact, the part was not actually used. FTZ's are isolated enclosed areas in or adjacent to a port of entry. Goods can be imported into the FTZ (non-privileged goods) without the payment of duty and used as parts of goods manufactured in the FTZ. The value of the part then is included in the dutiable value of the article manufactured in the zone when it is released from the zone and a Customs entry is filed.

In our decision of June 1, 1983, C.S.D. 83–96, 17 Cust. Bul. 932, we held in the described situation it was not necessary for the FTZ user to file an amended entry for the manufactured article, obtain a refund of duty for the unused part and return the part to non-privileged zone status. We stated that the unused part would be regarded as having domestic status (i.e., status in which it did not have to be included in the dutiable value of the manufactured article in which it was finally used), and that a separate entry could be filed for the part used in its place with the dutiable status of that part being regarded as the same as the entered manufactured article. This was an accommodation to zone users, particularly those with automated accounting systems which make amended entries and associated reprogramming difficult.

The legal basis for the ruling was that there was no perceived danger to the revenue and that Customs has been generally lenient with respect to non-adverse bookkeeping manipulations. However, the revenue could be affected if the unused part is never used as part of a larger article manufactured in the zone. In that situation, the usually higher rate of duty for non-privileged parts applicable when they are separately entered could be avoided.

Further, the language of the relevent zone statute specifically requires that foreign goods are to be treated the same as goods imported directly into the customs territory of the United States from a foreign country when they are entered from an FTZ. Therefore, the statutory language would appear to prohibit the manipulation allowed under the ruling. There are no statutory basis for suggesting that foreign goods in a zone are entitled to more generous treatment than goods arriving directly from a foreign country. Congress set a definite scheme for correcting errors on an entry. Under 19 U.S.C. 1503 a means for correcting an error in value is provided. Under 19 U.S.C. 1584 an importer is required to inform the Customs Service about incorrect entry documents. Finally, other methods are provided, where applicable, in 19 U.S.C. 1501 and 1520(c) for correcting errors in the liquidation of an entry. The language of the Zones Act requires that those statutes be followed.

The ruling states that the statutory procedure for amending an entry is too cumbersome. However, the procedure approved by the ruling involves changing the zone's inventory records to account for the presence of the parts in the zone that should have been removed and then later withdrawing those parts under a second entry when they are actually used. That procedure is not noticeably less cumbersome than following the procedure set by the statutes for correcting an entry.

The ruling is further based on the assumption that the only incorrect record is that of the first withdrawal. However, there would be an unexplained excess if the parts were not included in the withdrawn article or if the incoming receipts into the zone were incorrect. The offset procedure approved by the ruling could hide these facts. Accordingly, Customs now proposes to revoke C.S.D. 83–96, *supra*.

In order to assist us in our final determination on the issue, Customs is requesting the views of the public on the proposed revocation of the procedures approved by the ruling under review. If, after reviewing comments received in response to the notice, Customs decides to adopt the proposed change in position, an effective date for the change must be determined. To assist in determinig that date, written comments are also invited regarding an appropriate effective date and reasons for such date.

### Comments

Before making any determination on this matter, Customs will consider any written comments timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on regular business days, at the Regulations and Disclosure Law Branch, Room 2324, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

### Drafting Information

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

**Michael H. Lane,**

*Acting Commissioner of Customs.*

Approved: April 17, 1989.

**John P. Simpson,**

*Acting Assistant Secretary of the Treasury.*

April 17, 1989.

[FR Doc. 89–11737 Filed 5–16–89; 8:45 am]

**BILLING CODE 4820–02–M**

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## Internal Revenue Service

## 26 CFR Part 1

**[PS–002–89]**

**RIN 1545–AM92**

## Research and Experimental Expenditures

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document revises and supersedes the amendments to the regulations proposed in 1983 under section 174 of the Internal Revenue Code. These proposed amendments primarily relate to the definition of "research and experimental expenditures" and the application of section 174 to computer software development costs. The proposed amendments will provide taxpayers with guidance on the type of expenditures that will qualify as "research and experimental expenditures" for purposes of section 41 and section 174, of the Code.

**DATES:** These amendments are proposed to be effective, for purposes of both section 41 and section 174, for taxable years beginning after the date the amendments become final regulations by publication of a Treasury decision in the **Federal Register**. Written comments and requests for a public hearing must be delivered or mailed by July 17, 1989.

**ADDRESS:** Send comments and requests for a public hearing to: Internal Revenue Service, Attn: CC:CORP:T:R (PS–002–89), Room 4429, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** David S. Hudson, 202–566–4821 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Submission to Small Business Administration

Pursuant to section 7805(f) of the Code, the rules proposed in this document will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

### Background

On January 21, 1983, the Federal Register published (48 FR 2790) proposed amendments to the Income Tax Regulations (26 CFR Part 1) relating to the credit for increasing research activities and the treatment of "research and experimental expenditures" under section 174 of the Internal Revenue Code. A large number of comments were received and a public hearing was held on April 14, 1983.

This document proposes a more extensive set of amendments to the regulations under section 174 than those proposed in 1983. These regulations are proposed to clarify the definition of "research and experimental expenditures" under section 174, and to provide guidance on the application of section 174 to the costs of developing computer software.

### Explanation of Provisions

Section 1.174–2 of the regulations as proposed in 1983 included extensive clarifications of the regulations under section 174, including a clarification of the treatment of computer software.

Section 1.174–2(a)(3) of the 1983 proposed regulations provided that the costs of developing computer software are not "research or experimental expenditures" within the meaning of section 174 unless the computer software is new or significantly improved. The 1983 proposed regulations also provided that such term does not include costs paid or incurred for the development of software the operational feasibility of which is not seriously in doubt. A large number of comments were received that were critical of the proposed computer software provisions on the basis that the proposed regulations treated computer software differently from other products. On January 26, 1987, the Service announced in Notice 87–12 (1987–4 I.R.B. 14) that final regulations under section 174 would clarify that software development costs qualify as research expenses under the same standards as apply to the costs of developing other products or processes. The regulations proposed by this document revise and supersede the 1983 proposed amendments to the regulations.

These regulations contain a number of examples clarifying the application of section 174 to software development costs. The Service currently is studying the continuing validity of Rev. Proc. 69–21 (1969–2 C.B. 303) in light of the enactment of section 263A of the Code. Taxpayers are invited to comment on the proper treatment of computer software that does not qualify for section 174 treatment. Any change in the tax treatment of computer software will be prospective.

Section 1.174–2(a)(1)(iv) of the 1983 proposed regulations provided in part that the term "research or experimental expenditures" does not include the routine or periodic alteration or improvement of existing products, commercial existing products, commercial production lines, or other ongoing operations. A number of commentators suggested that the proposed regulations could be read to require a significant improvement for an activity to qualify under section 174. They suggested that such a reading would be overly restrictive because research and development activities may in many instances be part of an evolutionary process involving a series of minor improvements that, when taken together over a period of time, lead to a significantly improved product. The regulations proposed by this document do not include the reference to "routine" or "periodic" improvements. However, expenditures incurred after the point that a product or property (or component of the product or property) meets its basic design specifications related to function and performance level generally will qualify as research or experimental expenditures only if the expenditures relate to modifications to the basic design specifications for the purpose of curing significant defects in design, obtaining significant cost reductions or achieving significantly enhanced function or performance level. The regulations proposed by this document also modify the proposed regulations in certain other aspects.

### Regulatory Impact Analysis

These proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

### Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

### Drafting Information

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

### List of Subjects in 26 CFR 1.61–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

### Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Chapter I, Part 1 are as follows:

## PART 1—[AMENDED]

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

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

**Par. 2.** Section 1.174–2 is amended as follows:

1. Paragraph (a)(1) of § 1.174–2 is revised to read as set forth below.

2. Paragraph (a)(2) is redesignated as paragraph (a)(7).

3. Paragraph (a)(3) is redesignated as paragraph (a)(8) and is amended by removing "subparagraph (2)" and adding in its place "paragraph (a)(7)".

4. New paragraphs (a) (2), (3), (4), (5) and (6) are added to read as set forth below.

**§ 1.174–2 Definition of research and experimental expenditures.**

(a) *In general.* (1) The term "research or experimental expenditures," as used in section 174, means expenditures incurred in connection with the taxpayer's trade or business which represent research and development costs in the experimental or laboratory sense. The term includes generally all such experimental or laboratory costs incident to the development or improvement of an experimental or pilot model, a plant process, a product, a formula, an invention, or a similar property. It includes research or experimentation aimed at the discovery of new knowledge and research or experimentation searching for new applications of either research or

experimentation findings or other knowledge. However, not all of the expenditures incident to developing or improving a product or property will qualify as research or experimental expenditures within the meaning of section 174. Expenditures incurred after the point that the product or property (or component of the product or property) meets its basic design specifications related to function and performance level generally will not qualify as research or experimental expenditures under section 174 unless the expenditures relate to modifications to the basic design specifications for the purpose of curing significant defects in design, obtaining significant cost reductions or achieving significantly enhanced function or performance level.

(2) The following examples illustrate the application of the principles contained in paragraph (a)(1) of this section.

*Example (1).* Company B, a manufacturing company, decided to develop and market a new type of kitchen appliance. Company B incurred $500x of expenses relating to developing the basic performance and functional design specifications and constructing a prototype of the appliance based on these specifications. After B developed the product to the point where it met its basic design specifications, B incurred $250x of additional expenditures, including expenditures for minor modifications of the product to facilitate the manufacturing process, writing and printing an owner's manual, designing the case to contain the appliance, and performing quality control testing and market research. The $500x of expenses incurred to develop the appliance to meet its basic design specifications qualifies as research and experimental expenditures within the meaning of section 174. The $250x expended by B after the proposed product achieved its basic design specifications does not qualify as research or experimental expenditures within the meaning of section 174.

*Example (2).* Assume the same facts as in example (1) except that after the appliance has been fully developed and marketed, B discovers that the vibration level of the appliance could be reduced substantially and its useful life substantially extended by altering the basic design specifications. The costs incurred by B to alter the basic design specifications to reduce the vibration level and extend the useful life of the appliance are research or experimental expenditures within the meaning of section 174 because they relate to a modification of the basic design specifications of a component of a product.

(3) The term "research or experimental expenditure" does not include any cost incurred in connection with the following activities unless the expenditures relating to such activities separately qualify under section 174—

(i) Efficiency surveys or management studies;

(ii) Consumer surveys, market development, or market testing (including market research, advertising, or promotions);

(iii) The routine or ordinary testing or inspection of materials or products for quality control;

(iv) Activities relating to management functions or techniques developed primarily for internal use of the taxpayer in its trade or business and not generally intended for sale to customers;

(v) Activities not directed at the functional aspects of a product including expenses relating to style, taste, cosmetic, or seasonal design factors;

(vi) Activities relating to the implementation of commercial production;

(vii) The construction of duplicate prototypes used for market testing purposes or held for sale;

(viii) The adaptation of an existing capability to a particular requirement or customer's need;

(ix) Routine data collections;

(x) The acquisition of another person's patent, model, or production process; or

(xi) Literary, historical, or similar projects. However, the term includes the costs of obtaining a patent, such as attorneys' fees expended in making and perfecting a patent application. See section 263A and the regulations thereunder for cost capitalization rules that apply to expenditures paid or incurred for research in connection with literary, historical or similar projects involving the production of property, including the production of films, sound recordings, video tapes, books, or similar properties.

(4) The following examples illustrate the application of the principles contained in paragraph (a)(3) of this section.

*Example (1).* M Corporation, a textile manufacturer, develops a new synthetic fiber for use in a variety of applications. After extensive testing, the corporation decides that fabric made of the new fiber meets its basic design specifications and is ready for production. After initial marketing of the fabric, the corporation discovers that flaws exist in a significant percentage of the marketed fabric. The corporation determines that the flaws can be eliminated by adjusting the weaving machines so as to slightly loosen the weave of the fabric. Section 1.174–2(a)(3)(vi) provides that the term "research and experimental expenditures" does not include activities relating to the implementation of commercial production unless such expenditures separately qualify under section 174. Since the expenses of modifying the production line were incurred implementing commercial production specifications and did not relate to modifications of the basic design specifications of the fabric, such expenses do not constitute section 174 expenses.

*Example (2).* O Corporation, a manufacturer of perfume, decides to create a new perfume to sell to teenage girls. In laboratory tests, O Corporation developed a variety of scents, evaluating the odor of each scent, as well as its physical properties, such as whether it causes an allergic reaction. After this laboratory testing yielded several satisfactory alternatives which met O Corporation's basic design specifications, the corporation conducted consumer surveys to determine the preferences of potential customers. Based on information from this consumer survey, O Corporation selected one scent to market as a new perfume. Under § 1.174–2(a)(1), the term "research and experimental expenditures" means "research and development costs in the experimental and laboratory sense." Paragraph (a)(3)(v) of this section further provides that the term does not include "activities not directed at the functional aspects of a product including expenses relating to style, taste, cosmetic, or seasonal design factors." Although the expenditure relates to a consumer taste, the costs of developing the basic scent of the perfume will separately qualify under section 174 if they are research and experimental expenditures within the meaning of section 174. The costs of developing alternative perfumes to market to teenagers, however, do not constitute research or experimental expenditures under section 174 because the alternatives do not alter the basic design specifications of the perfume. However, the costs relating to the functional aspects of perfume, such as whether it causes an allergic reaction on certain persons, may qualify as section 174 expenses. Finally, the costs of conducting surveys to determine customer preferences with respect to the alternative perfumes do not constitute section 174 expenses because of the exclusion for consumer surveys or market testing activities.

*Example (3).* The facts are the same as in example (2), except that after the perfume was in production, O Corporation continued to test each batch of perfume to determine whether that batch is allergenic. The cost of performing such tests relate to quality control and do not constitute research or experimental expenditures under section 174.

*Example (4).* P Corporation, manufacturer of automobiles, decides to redesign the body of one of its existing models. This process typically involves a series of steps. Initially, the corporation's designers, working with certain basic design specifications, develop several alternative styles. From these alternative designs, the corporation's management will select one design which will then be tested by the corporation's engineers for a variety of functional specifications, including its aerodynamic efficiency and safety. Section 1.174–2(a)(3)(v) provides that section 174 does not include activities relating to the nonfunctional aspects of a product. Therefore, the costs of developing alternative designs for P corporation's new model do not constitute research or experimental expenditures under section 174. However, the costs relating to the aerodynamic testing and safety may constitute research or experimental expenditures under section 174.

*Example (5).* In 1987, S, a company that publishes general reference books for use by the general public, decides to publish textbooks for use in high schools throughout the country. To develop each textbook, S incurs expenses to develop the theme and topic of the textbook, obtain manuscripts from authors, edit the author's submission and obtain illustrations for the textbook. None of these expenses qualifies as research or experimental expenditures under section 174 by virtue of the exclusion for "literary, historical, or similar projects." and because they do not separately qualify as research and experimental expenditures within the meaning of section 174.

*Example (6).* G is a designer and manufacturer of specialized computer chips that will perform certain functions on a customer-designed hardware system in accordance with a customer's specifications. Each chip is custom-designed, through a process of experimentation, for a customer's specific order at G's risk. Each chip has a different basic design specification. The costs of designing and developing each chip are research and experimental expenditures within the meaning of section 174, even though the chips are intended for a specific customer because each chip has different basic design specifications.

*Example (7).* R, which is in the business of making cranes to be used for building construction, uses the same type of parts for each crane it manufactures. R designs and manufactures each crane in different configurations depending on the type of building being constructed, the situation of the building on the building site, and the distances between the site and the nearest streets. However, the cranes do not have different basic design specifications. The costs of designing and manufacturing the cranes are not research or experimental expenditures within the meaning of section 174 because they are costs of adapting an existing capability to a particular requirement or customer's need.

*Example (8).* B, a small manufacturer, develops a new employee training program for its business to conform to recent changes in management science. The costs of developing the employee training program do not qualify as research or experimentation because of the exclusion for management functions or techniques.

*Example (9).* C, a biotechnology firm, developed a new drug that substantially lowers blood pressure. Prior to marketing the drug, C incurs costs to test the product and obtain FDA approval of the drug. The costs incurred by C to develop, test, and receive government approval of the drug are research and experimental expenditures within the meaning of section 174.

*Example (10).* D, a manufacturer of tires, develops a new tire that is more puncture-resistant than any tire it has previously developed and marketed. Prior to production of the new tire, D constructs a number of duplicate prototypes for use in several different safety tests. After the safety tests are completed, D constructs additional duplicate prototypes to offer to car dealers for testing by their customers. D subsequently sold some of the tires that were used for safety or market testing. The costs of manufacturing the duplicate prototypes that were used for safety testing and were not held for sale to customers qualify for section 174 treatment. The costs relating to constructing the duplicate prototypes for market testing or sale to customers, however, do not qualify under section 174 because of the exclusion for duplicate prototypes. In addition, none of the costs of market testing qualifies under section 174 because of exclusion for market testing activities.

(5) The costs of developing computer software qualify as research or experimental expenditures within the meaning of section 174 under the same rules that apply to other products or properties.

(6) The following examples illustrate the application of the principles contained in paragraph (a)(5) of this section.

*Example (1).* F, a company in the business of developing software for sale to the public, intends to develop a new type of database management system for microcomputers. The new program will be different from any other product existing in the market and will contain new features and capabilities that previously were only available on programs designed for mainframe computers. Due to the differences between types of computers, F cannot use its existing technology for mainframe computers to produce database systems for microcomputers. To begin development of the program, F develops a detailed program design of the new program describing its functions and performance levels. Upon completion of the program design, F begins coding and testing the program as it is developed. After F had expended $500x, the program meets the basic design specifications. F then incurs $250x to prepare the program for market, including debugging, performing minor modifications to facilitate the manufacturing of the program, producing multiple copies of the software to send to outside consulting firms for further testing, and writing the documentation for users. The $500x expended to develop the program to meet its basic design specifications qualifies as a research or experimental expenditure within the meaning of section 174. The $250x expended after the program meets its basic design specifications does not qualify as a research or experimental expenditure.

*Example (2).* Assume the same facts as in example (1), except that two years after marketing the database management system, a number of B's customers reported errors that caused the system to shut down after extensive use. B recalled each system from its customers and replaced it with a system that the customers could use on a temporary basis. During this period, B's engineers conducted research to discover the source of the error. After months of research, B's engineers discovered a defect in the design of the system and redesigned the system to eliminate the problem. The expenses incurred to discover and correct the error are research and experimental expenditures within the meaning of section 174 because they relate to modifications to the basic design specifications for the purposes of curing significant defects in the original design of the product.

*Example (3).* D, a company in the business of developing software for sale to the public, currently markets a program that is used to analyze information derived from orbiting satellites. The existing software has been designed to operate on a specific computer system and with a specific operating system. Recent advances in satellite technology have changed the amount, type, and format of the data that is transmitted by satellites. These advances in satellite technology require a change in the design of the program to achieve an increase in processing rate, improvements in data handling capabilities, and a change in functional specifications to analyze the new data transmitted by satellites. Since the changes to be made to the existing software involve modifications to the performance levels and functions of the software, the costs incurred in connection with the development of the modifications to the basic design specifications of the software qualify as research or experimental expenditures within the meaning of section 174.

*Example (4).* E, a company in the business of developing software for sale to the public, currently markets a word processing program. The program entitled "Writer 1.0" has been marketed to the public for one year. Based on comments received from customers of the program, E decided to make changes to the program. Generally, these improvements involve adding some additional commands to the program. On completion of the changes, all new copies of the program delivered to customers contain the changes and are entitled "Writer 1.1." Previous customers of "Writer 1.0" are offered the opportunity to obtain copies of "Writer 1.1" for a nominal charge. Since the changes made to the existing software did not modify the basic design specifications relating to performance levels and functions of the software, the costs incurred in connection with the modifications to the program do not qualify as research or experimental expenditures within the meaning of section 174.

*Example (5).* C, a developer of software, develops and sells an inventory control software system. B, a customer of C, offers to buy C's software system but requires modification of the system to meet B's warehouse and distribution needs. Subsequently, C modifies: the inventory software to expand the number of data fields and to design a custom data input screen. These changes to the software do not alter the basic design specifications of the software. C's expenditures to modify the software system do not qualify as research or experimental expenditures within the meaning of section 174 because they relate to the adaptation of an existing product to a particular customer's need.

*Example (6).* G, a manufacturing company, develops software that automatically prepares financial data and analysis for inclusion in the annual report to shareholders. The costs of developing the software system are not research and experimental expenditures because the

software relates to internal management functions or techniques, and because they do not separately qualify as research and experimental expenditures within the meaning of section 174.

*Example (7).* K, a manufacturer of machine equipment, intends to automate its manufacturing process more fully. To this end, it begins development of an automated sorting system that will sort and test to determine whether components to be used in assembly of its products meet specifications. As part of the development of the new system, software is developed that will operate the sorting system. The software is developed by employees of K, written using standard computer programming language, and is not available for sale in the market. Although the software relates to the implementation of commercial production, the development of the software separately qualifies under section 174 because it relates to the development of a new plant process.

*Example (8).* C, publishing company, publishes a number of reference books including an encyclopedia. Due to the growing number of home computers, C decided that additional sales could be generated for the encyclopedia if it were published in electronic format. Therefore, C had the text of the encyclopedia coded onto data disks that can be read by personal home computers. The editorial content of the encyclopedia on the data disks is the same as the published edition. The costs of transferring the editorial content of the encyclopedia to the electronic media do not qualify as research or experimental expenditures within the meaning of section 174 because they were incurred in connection with development of a literary product, and because they do not separately qualify as research and experimental expenditures within the meaning of section 174.

* * * * *

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

[FR Doc. 89-10888 Filed 5-16-89; 8:45 am]

BILLING CODE 4830-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 926

### Montana Permanent Regulatory Program; Reopening and Extension of Public Comment Period on Proposed Amendment

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule; reopening and extension of comment period.

**SUMMARY:** OSMRE is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the Montana permanent regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamatioin Act 1977 (SMCRA). The additional explanatory information and revisions pertain to definitions, application requirements, application review, blasting, hydrology, revegetation, rills and gullies, and remining. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, incorporate the additional flexibility afforded by the revised Federal regulations, provide additional safeguards, clarify ambiguities, improve operational efficiency, and achieve use of the best technology currently available.

This notice set forth the times and locations that the Montana program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

**DATE:** Written comments must be received by 4:00 p.m., m.d.t., June 1, 1989.

**ADDRESSES:** Written comments should be mailed or hand delivered to Mr. Jerry R. Ennis at the address listed below.

Copies of the Montana program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Casper Field Office.

Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, WY 82601-1918, Telephone: (307) 265-5776.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 L Street NW., Washington, DC 20240, Telephone: (202) 343-5492

Gary Amestoy, Administrator, Department of State Lands, Reclamation Division, Capitol Station, 1625 Eleventh Avenue, Helena, Montana 59620, Telephone: (406) 444-2074

**FOR FURTHER INFORMATION CONTACT:** Mr. Jerry R. Ennis, Director, Casper Field Office, at the address listed in **"ADDRESSES."** Telephone: (307) 265-5776.

**SUPPLEMENTARY INFORMATION:**

#### I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980, **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15 and 926.16.

#### II. Proposed Amendment

By letter dated December 21, 1988 (administrative record No. MR-5-1), Montana Submitted a proposed amendment to its program pursuant to SMCRA. Montana submitted the proposed amendment in response to a July 2, 1985, letter that OSMRE sent in accordance with 30 CFR 732.17(c). The regulations that Montana proposes to amend are: Definitions and strip mine permit application requirements, Administrative Rules of Montana (ARM) 26.4 sub-chapter 3; mine permit and test pit prospecting permit procedures, ARM 26.4 sub-chapter 4; backfilling and grading requirements, ARM 26.4 sub-chapter 5; transportation facilities, explosives, and hydrology, ARM 26.4 sub-chapter 6; topsoiling, revegetation, and protection of wildlife and air resources, ARM 26.4 sub-chapter 7; alluvial valley floors, prime farmlands, alternate reclamation, and auger mining ARM 26.4 sub-chapter 8; underground coal and uranium mining, ARM 26.4 sub-chapter 9; prospecting, ARM 926.4 sub-chapter 10; bonding, insurance, reporting, and special area, ARM 26.4 sub-chapter 11, special departmental procedures, ARM 26.4 sub-chapter 12, and miscellaneous provisions, ARM 26.4 sub-chapter 13.

OSMRE published a notice in the January 9, 1989, **Federal Register** (54 FR 632) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (administrative record No. MT-5-16). The public comment period ended February 8, 1989.

During its review of the amendment, OSMRE identified some concerns relating to application requirements, ARM 26.4.303(4); blasting schedule, ARM 26.4.624(1); certification of impoundments, ARM 926.4.639(19); removal of siltation structures, ARM 26.4.639(22)(a)(i); establishment of vegetation, ARM 26.4.711; general revegetation requirements, ARM 26.4.711; eradication of rills and gullies, ARM 26.4.721; revegetation success standards, ARM 26.4.725; revegetation standards for trees, shrubs and half-shrubs, ARM 26.4.733; remining-eligiblity for abandoned mine land status, ARM

sub-chapter 8, rule VIII; and remining bonding, ARM sub-chapter 8, rule IX. OSMRE notified Montana of the concerns by letter dated March 20, 1989 (administrative record No. MT–5–15). Montana responded in a letter dated April 27, 1989, by submitting additional explanatory information and revised rules (administrative record No. MT–5–19).

### III. Public Comment Procedures

OSMRE is reopening the comment period on the proposed Montana program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Casper Field Office will not be considered in the final rulemaking or included in the administrative record.

### List of Subjects in 30 CFR Part 926

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: May 10, 1989.

**Peter A. Rutledge,**

*Acting Assistant Director, Western Field Operations.*

[FR Doc. 89–11804 Filed 5–16–89; 8:45 am]

BILLING CODE 4310–05–M

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 1

**RIN 2900–AD50**

### Regional Office Committee on Waivers and Compromises

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed regulations.

**SUMMARY:** The Department of Veterans Affairs (VA) is proposing to amend a current regulation which establishes the number of Committee members required to render a decision on a waiver request or compromise offer. The proposed regulation will require one, two, or three member panels in all cases. The effect of the regulation will be to provide the most efficient use of Committee members.

**DATES:** Comments must be received by June 16, 1989. All comments will be available for public inspection until June 26, 1989.

**ADDRESSES:** Interested persons are invited to send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Comments will be available for inspection only in room 132 of the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until June 26, 1989.

**FOR FURTHER INFORMATION CONTACT:** Peter Mulhern, (202) 233–3405.

**SUPPLEMENTARY INFORMATION:** 38 CFR 1.955 establishes one member, three member, and five member panels for the Committes on Waivers and Compromises. Under this regulation and current VA manuals, a one member panel is used to consider waiver requests on debts of $1,000 or less, a three member panel is required for waiver requests on debts in excess of $1,000, and a five member panel is required for those cases where a three member panel cannot reach a unanimous decision. Three member panels are currently used to consider all compromise offers.

Our proposed revision would require only one, two, or three member panels in all cases. A one member panel would be used for all waiver requests or compromise offers on debts of $20,000 or less, exclusive of interest and administrative costs. A two member panel would be required for all waiver requests and compromise offers on debts within the Committee's jurisdiction of more than $20,000, exclusive of interest and administrative costs. If the two member panel cannot reach a unanimous decision, then a third member will be added to the panel and the majority opinion will be the panel's decision. This panel alignment would also hold true on any Notice of Disagreement filed with a Committee decision to deny waiver.

We believe that this proposed revision will provide the most efficient use of Committee members. Under current procedures, three or five Committee members must be used to consider all compromise offers. Since the Committees are considering an increasing number of loan guaranty debts and these debts average approximately $15,000 per debt, more and more Committee decisions require at least three member panels.

The Secretary hereby certifies that these proposed regulations will not, if promulgated, 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), these proposed regulations are, therefore, exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that these proposed regulations primarily affect only individuals indebted to the U.S. Government as a result of participation in programs administered by the Department of Veterans Affairs.

These proposed regulations have also been reviewed under Executive Order 12291, Federal Regulation, and have been determined to be nonmajor because they will not have a $100 million annual effect on the economy and will not have any adverse economic impact on, or increase costs to, consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance number.

### List of Subjects in 38 CFR Part 1

Claims, Administrative practice and procedure, Veterans.

Approved: April 27, 1989.

**Edward J. Derwinski,**

*Secretary of Veterans Affairs.*

38 CFR Part 1, General, is proposed to be amended as follows:

## PART 1—[AMENDED]

1. In § 1.955, paragraphs (b), (b)(1), (c) and (d) are removed; paragraphs (b)(2), (b)(3), and (b)(4) are redesignated as paragraphs (b), (c), and (d) respectively and paragraph (e) is added to read as follows:

**§ 1.955 Regional Office Committees on Waivers and Compromises.**

* * * * *

(e) *Committee composition.* (1) The Committee shall consist of a Chairperson and Alternate Chairperson and as many Committee members and alternate members as the Director may appoint. Members and alternates shall be selected so that in each of the debt claim areas (i.e., compensation, pension, education, insurance, loan guaranty, etc.) there are members and alternates with special competence and familiarity with the program area.

(2) When a claim is properly referred to the Committee for either waiver consideration or the consideration of a

compromise offer, the Chairperson shall designate a panel from the available Committee members to consider the waiver request or compromise offer. If the debt for which the waiver request or compromise offer is made is $20,000 or less (exclusive of interest and administrative costs), the Chairperson will assign one Committee member as the panel. This one Committee member should have experience in the program area where the debt it located. The single panel member's decision shall stand as the decision of the Committee. If the debt for which the waiver request or compromise offer is made is more than $20,000 (exclusive of interest and administrative costs), the Chairperson shall assign two Committee members. One of the two members should be knowledgeable in the program area where the debt arose. If the two member panel cannot reach a unanimous decision, the Chairperson shall assign a third member of the Committee to the panel, or assign the case to three new members, and the majority vote shall determine the Committee decision.

(3) The assignment of a one or two member panel as described in paragraph (e)(2) of this section is applicable if the debtor files a Notice of Disagreement with a Committee decision to deny waiver. That is, if the Notice of Disagreement is filed with a decision by a one member panel to deny waiver of collection of a debt of $20,000 or less, then the Notice of Disagreement should also be assigned to one panel member. Likewise, a Notice of Disagreement filed with a decision by a two or three member panel to deny waiver of collection of a debt of more than $20,000 should also be assigned to a Committee panel of two members (three if these two members cannot agree). However, a Chairperson must assign the Notice of Disagreement to a different one, two, or three member panel than the panel that made the original Committee decision that is now the subject of the Notice of Disagreement.

(Authority: 38 U.S.C. 210(c)(1))

**§ 1.956 [Amended]**

2. In § 1.956(a)(1), remove the words "Department of Veterans Benefits" where they appear and add, in their place, the words, "Veterans Benefits Administration".

In § 1.956 (a)(2) and (a)(2)(iv) remove the words, "Department of Medicine and Surgery" where they appear and add, in their place, the words "Veterans Health Services and Research Administration".

[FR Doc. 89-11738 Filed 5-16-89; 8:45 am]

BILLING CODE 8320-01-M

**38 CFR Part 21**

**RIN 2900-AD63**

## Veterans Education; Veterans' Employment, Training and Counseling Amendments of 1988

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed Regulations.

**SUMMARY:** The Veterans' Employment, Training and Counseling Amendments of 1988 contain several provisions which affect the Department of Veterans Affairs (VA's) relationships with the State approving agencies (SAAs), and other provisions which affect the administration of the Veterans' Job Training Act (VJTA). This proposal will better inform the public how VA intends to implement these provisions of law.

**DATES:** VA is proposing to make the amendments dealing with the duties of the contracting officer effective the date on which the final regulations are approved. VA is proposing to make all the other amendments to §§ 21.4150, 21.4151, 21.4152, 21.4153, 21.4154 and 21.7200, like the provisions of law they implement, retroactively effective on May 20, 1988. VA is proposing to make the proposed § 21.4155, like the provisions of law it implements, retroactively effective on May 20, 1988. VA is proposing to make the amendments to §§ 21.4612, 21.4622, 21.4630 and 21.4632, like the provisions of law they implement, retroactively effective on July 19, 1988. VA is proposing to make the proposed §§ 21.4623 and 21.4631 like the provisions of law they implement, retroactively effective on July 19, 1988. Comments must be received on or before June 16, 1989. Comments will be available for public inspection until June 26, 1989.

**ADDRESSES:** Send written comments to: Secretary of Veterans' Affairs (271A), Department of Veterans Administration, 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 June 26, 1989.

**FOR FURTHER INFORMATION CONTACT:** William J. Susling, Jr., Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233-2092.

**SUPPLEMENTARY INFORMATION:** The Veterans' Employment, Training and Counseling Amendments of 1988 (Pub. L. 100-323) contain several provisions which affect VA's relationships with the various SAAs. Previously, the law provided that no department, agency, or officer of the United States could exercise any supervision or control over a State approving agency. This provision was the foundation of VA's relationships with SAAs.

Pub. L. 100-323 envisions a substantially new relationship. In particular, the law requires the Secretary of Veterans Affairs to conduct, in conjunction with SAAs, an annual evaluation of each SAA on the basis of standards developed by VA with the cooperation of the SAAs and to give each SAA an opportunity to comment on its evaluation. VA must take into account the results of the annual evaluation of the SAA when negotiating the terms and conditions of a contract or agreement with the SAA. VA may now supervise functionally the provision of course-approval services by the SAAs. VA must cooperate with SAAs in developing and implementing, to the extent practicable, a uniform national curriculum for training new SAA employees and for the continuing training of SAA employees, and sponsor, with the SAAs the provision of this training. Finally, VA will prescribe prototype qualification and performance standards, developed in conjunction with SAAs, for use by the SAAs in the development of individual qualification and performance standards for SAA personnel carrying out approval duties.

The law also amends the management of veterans' cases when they are training under the VJTA; provides job readiness skills development and counseling services for veterans who are eligible to train under the VJTA; states additional reasons for withdrawal of approval of a training program under that Act; and extends the deadlines for a veteran's initially applying for a job training program and beginning a job training program.

At this time the VA is also proposing amendments to §§ 21.4153 and 21.4154 which deal with the duties of the Contracting Officer. Although these changes are not required by law, they deal with subject matter related to the subject matter of the Act. VA proposes to make these amendments effective on the date the final regulations are approved.

VA finds that good cause exists for making the remaining amendments to §§ 21.4153 and 21.4154 and all the amendments to §§ 21.4150, 21.4151, 21.4152 and 21.7200 as well as the entire § 21.4155, like the sections of the law

they implement, retroactively effective on May 20, 1988. VA finds that good cause exists for making the amendments to §§ 21.4612, 21.4622, 21.4630 and 21.4632 as well as the entire §§ 21.4623 and 21.4631, like the provisions of law they implement, retroactively effective on July 19, 1988. To achieve the maximum benefit of this legislation for the affected individuals, State approving agencies and employers, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of services to a veteran who is otherwise entitled to them.

VA has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They 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 has certified that these proposed regulations, 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 regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because §§ 21.4150, 21.4151, 21.4152, 21.4153, 21.4154 and 21.7200 affect only State approving agencies, and so would have no economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

On the other hand, the proposed amendment to § 21.4622(a)(3) would require each employer to certify that the participating veteran will be provided with the full opportunity to participate in a personal interview with his or her case manager during the normal work day. This would have an economic effect on small entities. Since average starting wage paid to veterans training under VJTA is less than $10 per hour, and an interview would last, at most a few hours, VA does not believe that the economic impact would be significant. Furthermore, since the amended regulation is based upon the law, any economic impact would be caused by the underlying law.

In addition, some economic impact could potentially result from § 21.4623. As proposed, that regulation permits VA to disapprove payments on behalf of new participants in a job training program if the percentage of veterans who sucessfully complete the program is disproportionately low due to deficiencies in the quality of the program. There is no evidence, however, indicating that repeated unsuccessful completion of training programs is a widespread problem. Furthermore, in order to give employers ample opportunity to demonstrate that a training program does not have a disproportionately low completion rate, the proposed regulation would generally allow the employer the opportunity to train at least five veterans in the program before VA will examine the completion rate. Many programs have not yet had five trainees. Therefore, VA does not think that the proposed regulation will have a significant economic impact upon a substantial number of small entities.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.111, 64.117, 64.120, 64.121 and 64.124.

**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: April 24, 1989.

**Edward J. Derwinski,**

*Secretary of Veterans Affairs.*

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

1. In § 21.4150, paragraph (c) is revised to read as follows:

**§ 21.4150 Designation.**

* * * * *

(c) The provisions of 38 U.S.C. Chapter 36 and the sections in this part which refer to the State approving agency will, with respect to a State, be deemed to refer to VA when that State—

(1) Does not have and fails or declines to create or designate a State approving agency, or

(2) Fails to enter into an agreement as provided in § 21.4153 of this part.

(Authority: 38 U.S.C. 1771(b)(1))

* * * * *

2. In § 21.4151, paragraph (b) is revised to read as follows:

**§ 21.4151 Cooperation.**

* * * * *

(b) State approving agency responsibilities. State approving agencies are responsible for—

(1) Inspecting and supervising schools within the borders of their respective States,

(2) Determining those courses which may be approved for the enrollment of veterans and eligible persons,

(3) Ascertaining whether a school at all times complies with its established standards relating to the course or courses which have been approved, and

(4) Under an agreement with VA rendering services and obtaining information necessary for the Secretary's approval or disapproval under Chapters 30 through 36, Title 38, United States Code and Chapters 106 and 107, Title 10, United States Code, of courses of education offered by any agency or instrumentality of the Federal Government within the borders of their respective States.

(Authority: 38 U.S.C. 1772, 1773, 1774; Pub. L. 100–323)

3. In § 21.4152, paragraph (a) and the introductory text of paragraph (b) are revised to read as follows:

**§ 21.4152 Control by agencies of the United States.**

(a) *Control of educational institutions and State agencies generally prohibited.* Except as provided in § 21.4155 of this part, no department, agency, or officer of the United States will exercise any supervision or control over any State approving agency or State educational agency, or any educational institution.

(Authority: 38 U.S.C. 1782; Pub. L. 100–323)

(b) *Authority retained by VA.* The provisions of paragraph (a) of this section do not restrict authority conferred on VA:

* * * * *

4. In § 21.4153, paragraph (c)(2)(iii) is removed, paragraphs (c)(2)(i) and (c)(2)(ii) are redesignated as paragraphs (c)(2)(ii) and (c)(2)(iii) respectively; paragraphs (a)(1), (c)(4)(ii), and (f) are revised and new paragraph (c)(2)(i) is added, so the revised and added text reads as follows:

**§ 21.4153 Reimbursement of expenses.**

(a) * * *

(1) *Scope of contracts.* (i) If a State or local agency requests payment for service contemplated by law, and submits information prescribed in paragraph (e) of this section, VA will negotiate a contract or agreement with the State or local agency to pay (subject to available funds and acceptable

annual evaluations) reasonable and necessary expenses incurred by the State or local agency in—

(A) Determining the qualification of educational institutions and training establishments to furnish programs of education to veterans and eligible persons,

(B) Supervising educational institutions and training establishments, and

(C) Furnishing any other services VA may request in connection with the law governing VA education benefits.

(ii) VA will take into account the results of annual evaluations carried out under § 21.4155 of this part when negotiating the terms and conditions of the contract or agreement.

(Authority: 38 U.S.C. 1774, 1774A(a); Pub. L. 100–323)

* * * * *

(c) * * *

(2) * * *

(i) Reimbursement will be made under the terms of the contract for travel of personnel engaged in activities in connection with the inspection, approval or supervision of educational institutions, including—

(A) Travel of personnel attending training sessions sponsored by VA and the State approving agencies.

(B) Expenses of attending out-of-State meetings and conferences only if the Director, Vocational Rehabilitation and Education Service authorizes the travel.

(Authority: 38 U.S.C. 1774; Pub. L. 100–323)

* * * * *

(4) * * *

(ii) The Contracting Officer has approved the subcontract in advance.

(Authority: 38 U.S.C. 1774; Pub. L. 94–502, Pub. L. 95–902)

* * * * *

(f) *Contract compliance.* Reimbursement under each contract or agreement is conditioned upon compliance with the standards and provisions of the contract and the law. If the Director of the VA field facility of jurisdiction determines that the State has failed to comply with the standards or provisions of the law or with the terms of the reimbursement contract, he or she will withhold reimbursement for claimed expenses under the contract. If the State disagrees, the matter will be referred to the Contracting Officer for review. See 48 CFR 801.602.

(Authority: 38 U.S.C. 1774)

* * * * *

5. In § 21.4154, paragraphs (a) and (b)(2) and (3) are revised to read as follows:

**§ 21.4154 Report of activities.**

(a) *State approving agencies must report their activities.* Each State approving agency entering into a contract or agreement under § 21.4153 of this part must submit a report of its activities to VA. The report may be submitted monthly or quarterly by the State approving agency as provided in the contract or agreement.

(Authority: 38 U.S.C. 1774; Pub. L. 100–323)

(b) * * *

(2) Shall detail the activities of the State approving agencies under the agreement or contract during the preceding month or quarter, as appropriate;

(3) May include, at the option of the State approving agency, a cumulative report of its activities from the beginning of the fiscal year to date.

(Authority: 38 U.S.C. 1774; Pub. L. 100–323)

* * * * *

6. Section 21.4155 is added to read as follows:

**§ 21.4155 Evaluations of State approving agency performance.**

(a) *Annual evaluations required.* (1) VA shall conduct in conjunction with State approving agencies an annual evaluation of each State approving agency. The evaluation shall be based on standards developed by VA with State approving agencies. VA shall provide each State approving agency an opportunity to comment upon the evaluation.

(2) VA shall take into account the result of the annual evaluation of a State approving agency when negotiating the terms and conditions of a contract or agreement as provided in § 21.4153(a) of this part.

(Authority: 38 U.S.C. 1774A(a); Pub. L. 100–323)

(b) *Functional supervision of State approving agencies required.* VA shall exercise functional supervision over the provision of course-approval services by State approving agencies under this section.

(1) Functional supervision includes, but is not limited to—

(i) Providing technical assistance to State approving agency personnel with respect to carrying out their course-approval duties;

(ii) Checking for compliance with VA regulations regarding the provision of services under §§ 21.4150 through 21.4154 of this part; and

(iii) Bringing matters which require corrective action to the attention of State approving agency personnel who have authority over policy, procedures, and staff.

(2) Functional supervision does not include—

(i) Hiring, firing, disciplining or issuing directives to an employee of a State approving agency; and

(ii) Making regulations, changing procedure or establishing internal policies for a State approving agency.

(Authority: 38 U.S.C. 1774A; Pub L. 100–323)

(c) *Development of a training curriculum.* (1) VA shall cooperate with State approving agencies in developing and implementing a uniform national curriculum, to the extent practicable, for—

(i) Training new employees of State approving agencies, and

(ii) Continuing the training of the employees of the State approving agencies.

(2) VA with the State approving agencies shall sponsor the training and continuation of training provided by this paragraph.

(Authority: 38 U.S.C 1774A; Pub. L. 100–323)

(d) *Development, adoption and application of qualification and performance standards for employees of State approving agencies.* (1) VA shall—

(i) Develop with the State approving agencies prototype qualification and performance standards;

(ii) Prescribe those standards for State approving agency use in the development of qualification and performance standards for State approving agency personnel carrying out approval responsibilities under a contract or agreement as provided in § 21.4153(a) of this part; and

(iii) Review the prototype qualification and performance standards with the State approving agencies no less frequently than once every five years.

(2) In developing and applying standards described in paragraph (d)(1) of this section, a State approving agency may take into consideration the State's merit system requirements and other local requirements and conditions. However, no State approving agency may develop, adopt or apply qualification or performance standards that do not meet the requirements of subdivision (3) of this paragraph.

(3) The qualification and performance standards adopted by the State approving agency shall describe a level of qualification and performance which shall equal or exceed the level of qualification and performance described in the prototype qualification and performance standards developed by VA with the State approving agencies. The State approving agency may amend

or modify its adopted qualification and performance standards annually as circumstances may require.

(4) VA shall provide assistance in developing these standards to a State approving agency that requests it.

(5) After November 19, 1989, each State approving agency carrying out a contract or agreement with VA under § 21.4153(a) shall—

(i) Apply qualification and performance standards based on the standards developed under this paragraph, and

(ii) Make available to any person, upon request, the criteria used to carry out its functions under a contract or agreement entered into under § 21.4153(a) of this part.

(6) A State approving agency may not apply these standards to any person employed by the State approving agency on May 20, 1988, as long as that person remains in the position in which the person was employed on that date.

(Authority: 38 U.S.C. 1774A(b); Pub L. 100–323)

7. In § 21.4612, paragraph (c)(2) is revised to read as follows:

**§ 21.4612 Applications and certifications.**

* * * * *

(c) * * *

(2) A certificate expires 90 days from the date on which it is furnished to the veteran.

(i) VA may renew a certificate or grant a further certificate for a veteran who has voluntarily terminated a job training program or who has been involuntarily terminated from a job training program only when—

(A) The provisions of paragraph (b) of this section are met, and

(B) The Department of Labor has assigned a case manager for the veteran.

(ii) VA may renew a certificate or grant a further certificate for any other veteran when the provisions of paragraph (b) of this section are met.

(iii) A renewed certificate or further certificate expires 90 days from the date on which it is furnished to the veteran.

(Authority: Pub. L. 98–77, sec. 5, Pub. L. 98–543, sec. 212, Pub. L. 100–323, sec. 11)

8. In § 21.4622, paragraphs (a)(3) introductory text and (a)(3) (xv) and (xvi) are revised, and paragraphs (a)(3) (xvii) and (xviii) are added, so the revised and added text reads as follows:

**§ 21.4622 Employer applications for approval.**

(a) * * *

(3) In applying for approval of a job training program in the form prescribed by the Secretary of Veterans Affairs, the employer will certify—

* * * * *

(xv) That the employer, before the veteran's entry into training will—

(A) Furnish the veteran with a copy of the certification described in this paragraph, and

(B) Obtain and retain the veteran's signed acknowledgment of having received the certification;

(xvi) That the employer is in compliance with the following laws and all Federal Regulations adopted pursuant to those laws:

(A) Title VI of the Civil Rights Act of 1964,

(B) Title IX of the Education Amendments of 1972,

(C) Section 504 of the Rehabilitation Act of 1973, and

(D) The Age Discrimination Act of 1975;

(xvii) That the employer will provide each participating veteran for whom a case manager has been assigned by the Department of Labor with the full opportunity to participate in a personal interview with the veteran's case manager during the veteran's normal work day; and

(xviii) The information the employer is required to certify under Part 44 of this chapter concerning nonprocurement debarment and suspension.

(Authority: Pub. L. 98–77, secs. 6 and 7, Pub. L. 100–323, sec. 11; 20 U.S.C. 1681; 29 U.S.C. 794; 42 U.S.C. 2000d–1; 42 U.S.C. 6102)

9. Section 21.4623 is added to read as follows:

**§ 21.4623 Disapproval of new program entries.**

(a) *Payments on behalf of new participants may be disapproved.* The Director of a VA field facility, or the Director, Vocational Rehabilitation and Education Service, as appropriate, may disapprove entry into an employer's job training program under the Veterans' Job Training Act, by veterans who had not begun the job training program on the date of notice to the employer of such disapproval when the Director finds that the rate of veterans' successful completion of the job training program is disproportionately low as a result of deficiencies in the quality of the job training program.

(Authority: Pub. L. 98–77, sec. 11, Pub. L. 100–323, sec. 11(b))

(b) *Deficiencies in the job training program.* (1) In determining whether any completion rate is disproportionately low because of deficiencies in the quality of a job training program VA will take into account appropriate data including—

(i) Quarterly data provided by the Secretary of Labor with respect to—

(A) The number of veterans who—

*(1)* Receive counseling in connection with training under the Veterans' Job Training Act, and

*(2)* Participate in job training under the Veterans' Job Training Act,

(B) The reasons for veterans' failure to complete job training under the Veterans' Job Training Act; and

(C) Data compiled through the particular employer's compliance survey.

(Authority: Pub. L. 98–77, sec. 11(b), Pub. L. 100–323, sec. 11)

(c) *Successful completion rate for job training programs.* VA will determine whether the successful completion rate for a job training program is disproportionately low as follows.

(1) VA will determine the number of veterans who have either completed the job training program or terminated that program either voluntarily or involuntarily. If this number is four or less, VA will consider that the completion rate of the job training program is not disproportionately low unless there is strong evidence to the contrary.

(2) If the number determined in paragraph (c)(1) of this section is five or more or if the number is less than five and there is strong evidence that there are deficiencies in the quality of the program, VA will—

(i) Calculate a percentage by dividing the number of veterans who have completed the job training program by the number of veterans who have either completed that program or terminated that program,

(ii) Calculate a second percentage by dividing the number of veterans who have ever completed any job training program approved for veterans' training under the Veterans' Job Training Act by the number of veterans who have either completed one of these job training programs or terminated one of these job training programs, and

(iii) Compare the two percentages. If the percentage determined in paragraph (c)(2)(i) of this section is less than one-half the percentage determined in paragraph (c)(2)(ii) of this section, the successful completion rate of the job training program is low, and shall be considered with the data described in paragraph (b) of this section in determining whether it is disproportionately low.

(Authority: Pub. L. 98–77, sec. 11(b), Pub. L. 100–323, sec. 11)

(d) *Notification.* If after considering the data described in paragraphs (b) and

(c) of this section the Director of the VA field activity, or the Director, Vocational Rehabilitation and Education Service, as appropriate, determines that new entries in a program of job training under the Veterans' Job Training Act should be disapproved, as provided in paragraph (a) of this section, he or she shall notify the employer of the disapproval. The notice shall be by certified or registered letter, return receipt requested, and shall include—

(1) A statement of the reasons for VA's action, and—

(2) Notice of the employer's right to appeal to the Board of Veterans Appeals, and the right to a hearing.

(Authority: Pub. L. 98–77, sec. 11, Pub. L. 100–323, sec. 11(b))

(e) *Period of Disapproval.* (1) A disapproval as described in paragraph (a) of this section shall remain in effect until the Director of the VA field facility of jurisdiction or the Director, Vocational Rehabilitation and Education Service, as appropriate determines that the employer has taken adequate remedial action.

(2) Payments will be made on behalf of new participants only for training which occurs after the date on which the Director determines that remedial action has been taken.

(Authority: Pub. L. 98–77, sec. 11, Pub. L. 100–323, sec. 11)

**§ 21.4630 [Amended]**

10. In § 21.4630, paragraph (c) is removed.

11. Section 21.4631 is added to read as follows:

**§ 21.4631 Job readiness skills development and counseling.**

(a) *Employment counseling services.* At the request of a veteran who is eligible to participate in a job training program, the VA will provide the veteran with employment counseling services to assist him or her in selecting a suitable job training program.

(Authority: Pub. L. 98–77, Pub. L. 100–323, sec. 14(a))

(b) *Job readiness skills development and counseling*—(1) *Purpose.* The program of job readiness skills development and counseling services is designed to assist veterans in need of such assistance in finding, applying for, and successfully participating in a suitable job training program under the Veterans' Job Training Act.

(2) *Eligibility.* A veteran with a valid certificate furnished pursuant to § 21.4612(c) of this part may participate in a program of job readiness skills development and counseling services if—

(i) Staff in the Department of Labor or the Department of Veterans Affairs paragraph (b)(7) of this section find that the veteran needs such assistance, and

(ii) Funds are available to provide the veteran with a program of job readiness skills development and counseling services through contracts with appropriate service providers if the services needed cannot be furnished by VA or Department of Labor staff.

(3) *Scope of services.* (i) Job readiness skills development includes finding training and employment opportunities, completing job applications, functioning in an interview and other services and other assistance.

(ii) Counseling services include counseling services to assist in selecting suitable training opportunities and using appropriate methods of seeking, applying for and maintaining employment.

(4) *Providing services.* (i) VA and Department of Labor staff will provide job readiness skills development and counseling services to the veteran if such regular staff services are sufficient for the veteran to participate successfully in a job training program under the Veterans' Job Training Act.

(ii) If VA determines that the regular services of VA and Department of Labor staff are not sufficient for the veteran to participate successfully in a job training program under the Veterans' Job Training Act, the veteran may be placed in a program with service providers under contract to VA. This determination will be based upon a written certification by VA and Department of Labor staff of the need for assistance through a service provider under contract to VA.

(5) *Facilities with which contracts may be negotiated.* VA will enter into contracts only with established agencies, organizations, individuals and programs which have a demonstrated capacity to provide these services;

(6) *Approval of programs.* VA will approve programs of job readiness skills development and counseling in the same manner as under §§ 21.290, 21.292 and 21.294 of this part.

(7) *Staff.* For the purposes of making the determinations required by paragraph (b)(2) of this section; providing job readiness skills development and counseling services and making the written certification of the need for assistance from a service provider required by paragraph (b)(4) of this section; the staff of VA and the Department of Labor is limited to—

(i) Counseling psychologists and vocational rehabilitation specialists in the vocational Rehabilitation and Counseling Division of VA field facilities, or

(ii) Local Veterans' Employment Representatives and Disabled Veterans' Outreach Program Specialists in the State Employment agencies.

(Authority: Pub. L. 98–77, Pub. L. 100–323, sec. 14)

In § 21.4632, the heading, introductory text, and paragraph (e)(2)(i) and (ii) are revised to read as follows:

**§ 21.4632 Payment restrictions.**

VA shall not make payments to an employer if the job training program has not been approved as required by § 21.4622(b) of this part, or the veteran does not meet the eligibility requirements found in § 21.4610 of this part, or the provisions of § 21.4623 of this part prohibit payments to an employer on behalf of a veteran, or the payment would be for training subsequent to withdrawal of program approval under § 21.4624 of this part, or approval of a veteran's entrance into training must be withheld or denied due to a lack of funds. Payments made to employers on behalf of veterans in training shall be made in accordance with the provisions of this section.

* * * * *

(e) * * *

(2) * * *

(i) On behalf of any veteran who initially applies for a job training program after September 30, 1989;

(Authority: Pub. L. 98–543, sec. 212; Pub. L. 99–108; Pub. L. 99–238, sec. 201(e); Pub. L. 100–77, sec. 901(b); Pub. L. 100–227, Sec. 201[; Pub. L. 100 323, sec. 17]

(ii) For any job training program which begins after March 31, 1990;

(Authority: Pub. L. 98–543, sec. 212; Pub. L. 99–108; Pub. L. 99–238, sec. 210(e); Pub. L. 100–77, sec. 901(b); Pub. L. 100 323, sec. 17)

13. In § 21.7200, paragraphs (d) and (e) are revised and paragraph (f) is added, so the revised and added text reads as follows:

**§ 21.7200 State approving agencies.**

* * * * *

(d) Section 21.4153—Reimbursement of expenses,

(e) Section 21.4154—Report of activities, and

(f) Section 21.4155—Evaluation of State approving agency performance.

(Authority: 38 U.S.C. 1434, 1770, 1771, 1772, 1773, 1774, 1774A; Pub. L. 98–525, Pub. L. 100–323)

[FR Doc. 89–11739 Filed 5–16–89; 8:45 am]

BILLING CODE 8320–01–M

## POSTAL SERVICE

### 39 CFR Part 265

### Amendment of Release of Information Regulations—Predisclosure Notification Procedures

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service proposes to amend its Freedom of Information Act regulations to include procedures for the predisclosure notification of submitters of confidential business information. The procedures are designed to afford the submitter of confidential commercial information an opportunity to object to disclosure of the information. The proposed rules closely follow the guidelines of Executive Order 12600, 52 FR 23781 (1987).

**DATE:** Comments must be received on or before June 16, 1989.

**ADDRESS:** Written comments should be addressed to USPS Records Office, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–5010. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m. in room 10670 at the above address.

**FOR FURTHER INFORMATION CONTACT:** Charles D. Hawley, Assistant General Counsel, (202) 268–2971.

**SUPPLEMENTARY INFORMATION:** This proposed rule would add a new section to the Postal Service's regulations that implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, in order to prescribe the procedures to be followed in notifying submitters of business information that such information has been requested under the FOIA. It has been Postal Service policy to provide the business submitter with advance notice and an opportunity to comment when the submitter's commercially sensitive information is subject to an FOIA request. These regulations will formalize that policy. Although Executive Order 12600 does not apply to the Postal Service (see 39 U.S.C. 410), the proposal closely follows the notification procedures specified in the Executive Order for the sake of uniformity with the procedures being followed by other federal agencies. In addition, the rule is based substantially upon the Department of Justice's procedures set out at 28 CFR 16.7.

### List of Subjects in 39 CFR Part 265

Release of information, Postal service.

For the reasons set out in this notice, the Postal Service proposes to amend Part 265 of 39 CFR as follows:

## PART 265—RELEASE OF INFORMATION

1. The authority citation for Part 265 continues to read as follows:

**Authority:** 39 U.S.C. 401; 5 U.S.C. 552.

**§§ 265.9 through 265.11 [Redesignated from §§ 265.8 through 265.10 Respectively]**

2. Existing §§ 265.8 through 265.10 are retained and re-numbered as §§ 265.9 through 265.11, and a new § 265.8 is added to read as follows:

**§ 265.8 Business Information; Procedures for Predisclosure Notification to Submitters.**

(a) In general. This section provides a procedure by which persons submitting business information to the Postal Service can request that the information not be disclosed pursuant to a request under the Freedom of Information Act. This section does not affect the Postal Service's right, authority, or obligation to disclose information in any other context, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Postal Service, its officers, or any person. For purposes of this section, the following definitions apply:

(1) "Business information" means commercial or financial information provided directly or indirectly to the Postal Service by a submitter that arguably is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), as restated in § 265.6(b)(2) of this part.

(2) "Submitter" means any person or entity who provides business information, directly or indirectly, to the Postal Service. The term includes, but is not limited to, corporations, state governments, and foreign governments.

(b) Notice to submitters. (1) The custodian shall, to the extent permitted by law, provide a submitter with prompt written notice of a Freedom of Information Act request for the submitter's business information whenever required under paragraph (c) of this section, except as provided in 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 shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information. Whenever a disclosure determination requires notification of a voluminous number of submitters, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification. In the case of an administrative appeal, the General Counsel shall be responsible for providing such notification as may be appropriate under this section.

(2) When notice is given to a submitter under paragraph (b)(1) of this section, the requester also shall be notified that notice and an opportunity to object are being provided to the submitter pursuant to this section.

(c) When notice is required. Notice shall be given to a submitter whenever:

(1) The submitter has in good faith designated the information as information deemed protected from disclosure under Exemption 4, in accordance with the procedure described in paragraph (e) of this section; or

(2) In the opinion of the custodian, or the General Counsel in the case of an administrative appeal, it is likely that disclosure of the information would result in competitive harm to the submitter.

(d) Exceptions to notice requirements. The notice requirements of paragraph (b) of this section shall not apply if:

(1) The Postal Service determines without reference to the submitter that the information will not be disclosed;

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

(3) Disclosure of the information is required by law (other than the Freedom of Information Act, 5 U.S.C. 552);

(4) Disclosure of the particular kind of information is required by a Postal Service regulation, except that, in such case, the notice described in paragraph (b) of this section shall be provided to the submitter if the submitter had provided written justification for protection of the information under Exemption 4 at the time of submission or a reasonable time thereafter; or

(5) The submitter's designation in accordance with paragraph (e) of this section appears obviously frivolous, except that, in such case, the submitter shall be provided with written notice of any final administrative decision to disclose the designated business information within a reasonable number of days prior to a specified disclosure date.

(e) Procedure for designating business information at the time of its submission. (1) Submitters of business information shall use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected from disclosure under Exemption 4. Each record, or portion thereof, to be so designated,

shall be clearly marked with a suitable legend such as "Privileged Business Information—Do Not Release". When the designated records contain some information for which an exemption is not claimed, the submitter shall clearly indicate the portions for which protection is sought.

(2) At the time a designation is made pursuant to this paragraph, the submitter shall furnish the Postal Service with the name, title, address and telephone number of the person or persons to be contacted for the purpose of the notification described in paragraph (b) of this section.

(3) A designation made pursuant to this paragraph shall be deemed to have expired ten years after the date the records were submitted unless the submitter requests, and provides reasonable justification for, a designation period of greater duration.

(4) The Postal Service will not determine the validity of any request for confidential treatment until a request for disclosure of the information is received.

(f) Opportunity to object to disclosure. Through the notice described in paragraph (b) of this section, the submitter shall be afforded a reasonable period of time within which to provide the Postal Service with a detailed written statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the submitter that the information in question is in fact confidential, has not been disclosed to the public by the submitter and is not routinely available to the public from other sources. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(g) Determination that confidential treatment is warranted. If the custodian determines that confidential treatment is warranted for any part of the requested records, he shall inform the requester in writing in accordance with the procedures set out in § 265.7(d) of this part, and shall advise the requester of the right to appeal. A copy of the letter of denial shall also be provided to the submitter of the records in any case in which the submitter had been notified of the request pursuant to paragraph (c) of this section.

(h) Notice of intent to disclose. The custodian, in the case of an initial request, or the General Counsel, in the case of an appeal, shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. In the event of a decision to disclose business information over the objection of the submitter, the submitter shall be furnished a written notice which shall include:

(1) A description of the business information to be disclosed;

(2) A statement of reaons for which the submitter's disclosure objections were not sustained; and

(3) The specific date upon which disclosure will occur. Such notice of intent to disclose shall be forwarded to the submitter a reasonable number of days prior to the specified disclosure date and the requester shall be notified likewise.

(i) Notice of FOIA lawsuit. Whenever a requester brings suit seeking to compel disclosure of business information, the General Counsel shall promptly notify the submitter.

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 89-11743 Filed 5-16-89; 8:45 am]

BILLING CODE 7710-12-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP-300198; FRL-3569-4]

### Deinked Paper Fiber; Tolerance Exemption

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that deinked paper fiber be exempted from the requirement of a tolerance when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops only. This proposed regulation was requested by Jellinek, Schwartz, Connolly, and Freshman, Inc.

**DATE:** Written comments, identified by the document control number [OPP-300198], must be received on or before June 16, 1989.

**ADDRESS:** By mail, submit comments to:

Program Management and Support Division (H-7502C). Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to:

Registration Support Branch, Registration Division (H-7505C), Environmental Protection Agency, Rm. 726, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kerry B. Leifer, Registration Support Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Registration Support Branch, Rm. 726, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-5180.

**SUPPLEMENTARY INFORMATION:** At the request of Jellinek, Schwartz, Connolly, and Freshman, Inc., the Administrator proposes to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for deinked paper when used as a carrier in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and

toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

*Name of inert ingredient.* Deinked paper fiber.

*Name and address of requester.* Jellinek, Schwartz, Connolly, and Freshman, Inc., 1350 New York Ave., NW., Suite 400, Washington, DC 20005.

*Bases for approval of deinked paper fiber.* 1. Paper fiber produced by the kraft (sulfate) or sulfite-pulping process is cleared under 40 CFR 180.1001(d) for use as a carrier in pesticide formulation applied to growing crops only.

2. Several similar cellulosic materials are cleared under 40 CFR 180.1001(c) for use as carriers in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. These include alpha-cellulose, oat hulls, shells (almond, cocoa, coconut, and walnut), wood flour, etc.

3. Pulp is cleared under 21 CFR 186.1673 as an indirect food substance affirmed as generally recognized as safe (GRAS).

4. Pulp from reclaimed paper is cleared under 21 CFR 176.260 as a component of articles used in producing, processing, preparing, treating, packaging, transporting, or holding food subject to provisions that exclude products which bear or contain poisonous or deleterious substances retained in the recovered pulp and that migrates to food, except as provided in regulations promulgated under sections 406 and 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346 and 348).

5. Analytical data furnished by the requester indicate that heavy metal contamination is at levels within those allowed by EPA for agricultural soils. Polychlorinated biphenyl (PCB) contamination is at levels below those allowed by FDA for recycled paper when used to in food packaging and at levels below those allowed by EPA for fertilizers applied to agricultural crops. Priority pollutants were not detected in the samples analyzed. It is therefore expected that the contaminants in deinked paper fiber will not pose a risk to human health or the environment.

EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Based on a review of such data, the Agency has determined that no additional test data will be required to support these regulations.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment. In conclusion, the Agency has determined that the proposed amendment to 40 CFR Part 180 will protect the public health. It is therefore proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, that contains this inert ingredient may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number (OPP–300198). All written comments filed in response to this proposal will be available for inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

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

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

**List of Subjects in 40 CFR Part 180**

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

Dated: May 3, 1989.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that Part 180 be amended as follows:

## PART 180—[AMENDED]

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

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

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

**§ 180.1001 Exemptions from the requirement of a tolerance.**

* * * * *

(d) * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * * | * | * |
| Paper fiber, deinked or recycled conforming to 21 CFR 109.30(a)(9) and 21 CFR 176.260. | ..... | Carrier. |
| * * * | * | * |

* * * * *

[FR Doc. 89–11293 Filed 5–16–89; 8:45 am]

BILLING CODE 6560–50–M

## 40 CFR Part 790

**[OPTS–42052G; FRL–3572–3]**

## Testing Consent Agreements and Test Rules

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to amend its procedural rule governing manufacturers and processors of chemical substances and mixtures (chemicals) performing testing pursuant to section 4 of the Toxic Substances Control Act (TSCA). The amendment proposes to treat manufacturers of small quantities of chemicals subject to section 4 test rules like processors are treated under the current rule. It would eliminate the requirement that certain manufacturers file letters of intent to test and exemption applications unless no other manufacturer of the chemical subject to a section 4 test rule submits a letter of intent to test. In addition, this proposal would modify the requirement to submit study plans at least 45 days prior to initiation of testing, eliminating the requirement unless it is specified in a particular test rule or testing consent order.

**DATE:** Submit written comments on or before June 16, 1989.

**ADDRESS:** Submit written comments, identified by the document control number (OPTS–42052G), in triplicate to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of

Toxic Substances, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** Section 4 of TSCA gives EPA authority to require manufacturers and processors of chemicals to conduct testing relevant to determining the risk to human health and the environment posed by exposure to particular chemicals. In response to an argument made by the Chemical Manufacturers Association (CMA) in a petition for changes to a final test rule for certain Office of Solid Waste chemicals (OSW rule), published June 15, 1988 (53 FR 22300), EPA is proposing to amend its procedural rule for implementing section 4 to treat certain small quantity manufacturers of chemicals subject to test rules like processors are treated. EPA also is proposing to modify the requirement to subject study plans to EPA 45 days prior to initiation of testing.

This proposed rule would decrease the public reporting burden, by eliminating under certain circumstances the requirement for certain small quantity manufacturers to submit letters of intent to test or exemption applications.

## I. Introduction

On August 9, 1988, EPA held a meeting with CMA to discuss the issues raised in CMA's petition concerning the OSW rule. CMA raised several issues, one of which concerned the burden of section 4 requirements on research and development (R & D) and small quantity manufacturers. CMA argued that these manufacturers are unlikely to perform testing but are obligated under EPA's current procedures to monitor their activities and to submit exemption applications from the effective date of the rule and throughout the reimbursement period. The reimbursement period begins when the final report is submitted to EPA and lasts at least five years beyond. During this period, test sponsors may use the exemption applications to seek proportional reimbursement for the costs of testing. In practice, the administrative costs of seeking reimbursement from small quantity manufacturers would probably exceed the reimbursement. Thus, CMA argued the requirement imposes an administrative burden but serves no practical purpose. EPA agreed with CMA's argument, but decided that it was not specific to the OSW rule. Accordingly, instead of changing only the OSW test rule, EPA has decided to propose that this change apply to all test rules.

In short, this proposed rule would remove the requirement for certain small quantity manufacturers to submit letters of intent to test and exemption applications at the early stage of a test rule, while reserving the authority to require compliance later if necessary. Secondly, this proposed rule would change the timing of submission of study plans prior to initiation of testing.

## II. Proposed Rule

### *A. Persons Subject to a Test Rule*

Under EPA's current procedural rules for section 4 of TSCA, after a test rule applicable to manufacturers and processors of a specific chemical (or manufacturers only) is promulgated, the manufacturers must either submit a letter of intent to test or an application for exemption from testing (40 CFR 790.45). Submission of these letters or exemption applications is required within 30 days of the effective date of the rule (if the chemical is manufactured by the person as of or within 30 days after the effective date of the rule), or by the date manufacture begins, if the person begins manufacture before the end of the reimbursement period (five years after submission of the final report to EPA or the time required to develop the data, whichever is later).

Small quantity manufacturers of chemicals are subject to these requirements and typically file exemption applications. EPA grants an exemption upon application if another manufacturer has notified EPA of its intent to perform the required testing. The exemption applications also make it easier for test sponsors to seek proportional reimbursement from persons subject to the test rule. (Test sponsors legally may seek reimbursement from all persons subject to test rules, including processors, whether or not they have been required to file exemption applications.)

Because small quantity manufacturing is normally a small percentage of the overall production volume, test sponsors ordinarily do not expend administrative resources to recover the small proportional amounts of the testing costs from these manufacturers. Therefore, in general, filing of exemption applications by small quantity manufacturers serves no practical purpose. Moreover, the requirement to file exemption applications, as applied to manufacturers who may begin to produce a chemical subject to a test rule solely in small quantities for the first time after the effective date of the test rule but before the end of the reimbursement period, is burdensome to the manufacturers. Administrative resources must be expended by a company to determine periodically if any chemicals currently subject to testing under section 4 are being manufactured in small quantities. This may involve keeping track of a substantial number of chemicals.

Under EPA's procedural rules, when both manufacturers and processors are subject to a rule, the processors do not bear these administrative burdens because EPA chose to treat them differently. While both are subject to test rules, processors are not required to submit letters of intent to test or exemption applications unless no manufacturer submits a letter of intent to test (40 CFR 790.42). However, they may be subject to a claim for reimbursement by a manufacturer who actually performs the test (40 CFR 791.2). (In any event, processors are subject to export notification requirements as specified in TSCA section 12(b).)

This proposal would amend the procedural rule governing test rules and consent agreements under section 4 of TSCA to alleviate the reporting burden on certain small quantity manufacturers of chemicals subject to section 4 rules by treating them like processors are currently treated. Although EPA believes that small quantity manufacturers are properly subject to testing and reimbursement requirements under section 4, this proposal would eliminate the requirement that certain small-quantity manufacturers file letters of intent to test and exemption applications unless no other manufacturer of a chemical substance subject to a section 4 test rule submits a letter of intent to test. As is the case for processors, these manufacturers would still be legally subject to test rules (and export notification requirements as specified in TSCA section 12(b)), and would not be exempt from reimbursement claims. Thus, this proposed rule would not change the legal rights and obligations of persons subject to section 4 test rules, but would eliminate some of the paperwork burden associated with complying with section 4 rules.

This proposed change would apply to all section 4 test rules, including test rules in effect at the time the final procedural rule change is promulgated, test rules proposed at that time, and test rules promulgated after that date. Thus, small quantity manufacturers who are subject to any section 4 test rules at the time of publication of the final rule change would not have to continue to monitor chemicals they manufacture in small quantities to determine compliance with section 4 rules.

EPA is proposing that persons who manufacture less than 500 kilograms (1,100 pounds) per year of a chemical subject to testing under a test rule during the period from the effective date of the test rule to the end of the reimbursement period would only be required to submit letters of intent to test or exemption applications if no other manufacturer of the chemical submits a letter of intent to test. If no manufacturer submits a letter of intent to test, EPA would notify the small quantity manufacturers (and processors as applicable), by **Federal Register** notice or certified mail as set forth in 40 CFR 790.48, that they are subject to the requirement to submit letters of intent to test or exemption applications.

*B. Submission of Study Plans*

EPA proposes to modify its requirement in 40 CFR 790.40 that study plans be submitted 45 days prior to initiation of each test, by eliminating the requirement unless specified in a particular test rule or consent order. As stated in the **Federal Register** of May 17, 1985 (50 FR 20652), under single-phase rulemaking, EPA no longer approves protocols contained within study plans, but may use them to monitor the testing program and schedule audits. EPA is confident that in most cases, submitting study plans less than 45 days prior to initiation of the test would give EPA sufficient opportunity to arrange for laboratory inspections and data audits. Thus, unless necessary for a particular rule or consent agreement, e.g., to examine a novel protocol, EPA would no longer specify how many days prior to initiation of testing a study plan must be submitted.

## III. Issues for Comment

EPA solicits comment on the proposed approach to defining small quantity manufacturers. In addition, EPA solicits comment on any other possible alternative definition that would achieve this same purpose.

The proposed definition is based on annual production, but EPA would also consider and is examining carefully any or a combination of the following: (1) Basing the quantity limitation on total production from the effective date of the test rule through the end of the reimbursement period; or (2) establishing a quantity limitation based on production per manufacturing site, rather than on total production by a manufacturer.

EPA also requests comments on the proposed selection of 500 kg as the threshold for defining manufacturers of small quantities of chemicals. The 500 ky threshold is proposed for consistency with the 500 kg threshold established for reporting under the TSCA Preliminary Assessment Information Rule (PAIR) (40 CFR 712.25). The 500 kg threshold was established under the PAIR because it was believed that excluding the small number of reports for such manufacturers would not affect the quality of the assessment of chemicals but would relieve an unneccessary reporting burden. In the present proposal, EPA believes that this threshold will likewise not affect the ability of test sponsors to seek reimbursement from those manufacturers applying for exemptions from testing while reducing the paperwork burden on these small quantity manufacturers. EPA solicits comments on whether there are more appropriate production thresholds.

These options are meant to cover the range of definitions EPA could use to include within the scope of the definition those persons who manufacture small amounts of a chemical from whom reimbursement would not likely be sought under a test rule.

## IV. Rulemaking Record

EPA has established a record for this rulemaking (OPTS–42052G). This record includes:

(1) Chemical Manufacturers Association (CMA) letter and Petition for an Administrative Stay and Modification of the Final Toxic Substances Control Act Section 4 Test Rules on Solid Waste Chemicals (53 FR 22300; June 15, 1988). (July 29, 1988).

(2) Notes from meeting between CMA and EPA, held at the request of CMA. (August 9, 1988).

(3) Notice of final rulemaking on data reimbursement (48 FR 31786; July 11, 1983).

(4) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652; May 17, 1985).

## V. Other Regulatory Requirements

*A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this procedural rule change would not be major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it would not have an annual effect on the economy of at least $100 million, would not caue a major increase in prices, and would not have significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments are included in the rulemaking record.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this procedural rule change would not have a significant impact on a substantial number of small businesses because: (1) They already are not likely to perform testing themselves, or to participate in the organization of the testing effort, and this proposed change would make their participation even more unlikely; (2) this proposed change would reduce the number of small businesses that will experience any costs in securing exemption from testing requirements; and (3) small businesses are unlikely to be affected by reimbursement requirements.

*C. Paperwork Reduction Act*

Th current information collection requirements of section 4 rules have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0033.

The proposed change in the procedural rule for implementation of section 4 of TSCA will reduce the public reporting burden by no longer automatically requiring manufacturers of small quantities of chemicals to submit applications for exemption from testing.

Send comments regarding the burden reduction to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

## List of Subjects in 40 CFR Part 790

Chemicals, Environmental protection, Hazardous substances, Testing, Laboratories, Reporting and recordkeeping requirements.

Dated: May 8, 1989.

Victor J. Kimm,

*Acting Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, it is proposed that 40 CFR, Chapter I, Subchapter R, be amended as follows:

## PART 790—[AMENDED]

1. The authority citation for Part 790 would continue to read as follows:

Authority: 15 U.S.C. 2603.

2. In § 790.42, by adding paragraph (a)(4) to read as follows:

**§ 790.42 Persons subject to a test rule.**

(a) * * *

(4) While legally subject to the test rule in circumstances described in paragraph (a)(1) of this section, persons who manufacture less than 500 kilograms (1,100 pounds) of the chemical annually during the period from the effective date of the test rule to the end of the reimbursement period, must comply with the requirements of the test rule only if such manufacturers are directed to do so in a subsequent notice as set forth in § 790.48, or if directed to do so in a particular test rule.

* * * * *

3. In § 790.48, by revising paragraphs (a)(2) and (b)(3) to read as follows:

**§ 790.48 Procedure if no one submits a letter of intent to conduct testing.**

(a) * * *

(2) If no manufacturer subject to the test rule has notified EPA of its intent to conduct one or more of the required tests within 30 days after the effective date of the test rule described in § 790.40, EPA will notify all manufacturers, including those described in § 790.42(a)(4), by certified mail or by publishing a notice of this fact in the **Federal Register** specifying the tests for which no letter of intent has been submitted and will give such manufacturers an opportunity to take corrective action.

* * * * *

(b) * * *

(3) No later than 30 days after the date of publication of the **Federal Register** notice described in paragraph (b)(2) of this section, each person described in § 790.40(a)(4) and each person processing the subject chemical as of the effective date of the test rule described in § 790.40 or by 30 days after the date of publication of the **Federal Register** notice described in paragraph (b)(2) of this section must, for each test specified in the **Federal Register** notice, either notify EPA by letter of his or her intent to conduct testing or submit to EPA an application for an exemption from testing requirements for the test.

* * * * *

4. In § 790.50, by revising paragraph (a)(1) to read as follows:

**§ 790.50 Submission of study plans.**

(a) * * *

(1) Persons who notify EPA of their intent to conduct tests in compliance with a single phase test rule or consent agreement as described in § 790.40(b)(1) must submit study plans for those tests prior to the initiation of each of these test, unless directed by a particular test rule or consent agreement to submit study plans at a specific time.

* * * * *

[FR Doc. 89-11826 Filed 5-16-89; 8:45 am]

BILLING CODE 6560-50-M

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## 40 CFR Part 799

**[OPTS 42107; FRL-3572-5]**

## 1,6-Hexamethylene Diisocyanate; Proposed Test Rule

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a test rule under section 4 of the Toxic Substances Control Act (TSCA) that would require manufacturers and processors of 1,6-hexamethylene diisocyanate (HDI) (CAS No. 822-06-0) to test HDI for oncogenicity, mutagenicity, reproductive toxicity, developmental toxicity, neurotoxicity, pharmacokinetics, and hydrolysis. This proposed rule is EPA's response to the Interagency Testing Committee's (ITC) designation of HDI for health effects consideration in its twenty-second report to the Administrator of EPA.

**DATES:** Submit written comments on or before July 17, 1989. If persons request an opportunity to submit oral comments by July 3, 1989, EPA will hold a public meeting on this rule in Washington, DC. For further information on arranging to speak at the meeting, see Unit VIII. of this preamble. The incorporation by reference in this rule will be effective on the effective date of the final rule.

**ADDRESS:** Submit written comments identified by the document Control number (OPTS-42107) in triplicate to: TSCA Public Docket Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room NE-G004, 401 M Street SW., Washington, DC 20460.

A public version of the administrative record supporting this action is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** EPA is issuing a proposed test rule under section 4(a) of TSCA in response to the ITC's designation of HDI for health effects testing consideration.

### I. Introduction

*A. ITC Recommendation*

In its twenty-second report to the EPA Administrator, the ITC designated HDI for health effects testing, including chronic toxicity, oncogenicity, and reproductive and developmental effects. The rationale behind this designation is discussed in the **Federal Register** of May 20, 1988 (53 FR 18196). Based on an ongoing carcinogenicity study being conducted in one rodent species, the ITC recommended that chronic toxicity studies with carcinogenicity as an endpoint be conducted in another species in accordance with accepted guidelines.

*B. Test Rule Development Under TSCA*

Detailed discussions of the TSCA section 4 findings (section 4(a)(1) (A) and (B)) were provided in EPA's first and second proposed test rules which were published in the **Federal Register** of July 18, 1980 (45 FR 48510), and June 5, 1981 (46 FR 30300).

EPA has evaluated the ITC's testing recommendations for HDI, relying heavily on the Information Review (Ref. 1) developed by the ITC in support of their findings, as well as the supplemental information developed by EPA (see Unit IX. of this preamble). Based upon EPA's evaluation of this information, EPA is proposing health effects and chemical fate testing for HDI under TSCA section 4(a)(1)(B). This action completes EPA's statutory response to the ITC.

### II. Chemical Profile and Health Effects

The HDI chemical profile, a review of published studies, and an analysis of the health effects, including acute toxicity, subchornic toxicity, chronic toxicity, oncogenicity, mutagenicity, reproductive effects, developmental toxicity, and neurotoxicity, and an analysis of metabolism and pharmacokinetis of HDI are described in the ITC's Information Review (Ref. 1), the HDI technical support document prepared by the Syracuse Research Corporation (Ref. 2),

and in the ITC Report published in the Federal Register (53 FR 18201).

## III. Findings

Under TSCA section 4(a)(1)(B), EPA finds that HDI is produced in substantial quantities, that there is or may be substantial human exposure to HDI from its manufacture, processing, and use, and that insufficient data and experience exist to reasonably determine or predict: (1) The oncogenic, genotoxic, reproductive, developmental, and neurotoxic effects of human exposure to HDI resulting from its manufacture, processing, and use; (2) The absorption, distribution, metabolism, and excretion of HDI in the body as a result of dermal, oral, and inhalation exposure from HDI manufacture, processing, and use; and (3) the chemical fate of HDI in the atmosphere resulting from HDI manufature, processing, and use. EPA also finds that the testing program proposed in this Federal Register notice is necessary to, and will develop such data.

### *A. Substantial Production*

The public portion of the TSCA section 8(b) Inventory data base lists U.S. production of HDI as 1 to 10 million pounds in 1977 (Ref. 1). Mobay reported 1981 production at 9 to 11 million pounds, and has estimated its 1987 production in the area of 11 million pounds (Ref. 1). The actual production and import volumes for 1987 have been submitted as confidential business information. EPA finds that this annual production volume is "substantial" as that term is used in section 4(a)(1)(B) of TSCA.

### *B. Substantial Human Exposure*

EPA finds that the production and uses of HDI-containing resins and trimers in polyurethane paint systems results in potential exposure to substantial numbers of workers. HDI is used in the manufacture of higher molecular weight biuret polyisocyanate resins and trimer polyisocyantate resins used in polyurethane paint systems. The greatest potential for occupational exposures to HDI is in coating application operations, with an estimated 153,000 autobody repair workers having a potential for some exposure to HDI biuret and trimer-containing paints (Ref. 1). Potential exposures to workers supporting EPA's finding are described in the Information Review (Ref. 1). EPA believes that potential exposure of 153,000 workers as well as exposures listed in Reference 1 is "substantial" as that term is used in section 4(a)(1)(B) of TSCA.

### *C. Insufficiency of Data*

On the basis of its review of data, EPA finds that existing data are insufficient or unavailable to reasonably determine or predict oncogenic, genotoxic, reproductive, developmental, and neurotoxic effects on human exposure to HDI resulting from its manufacture, processing, and use.

EPA has reviewed all of the available studies on the carcinogenicity of HDI and has found no current completed studies on the carcinogenicity of HDI in laboratory animals in the available literature, therefore there is insufficient information to predict the carcinogenic potential of HDI. EPA recognizes that HDI is currently undergoing testing in a 2-year rat inhalation toxicity/oncogenicity study (Ref. 5). EPA is, however, proposing that a bioassay be conducted according to TSCA test guidelines. Should this study (scheduled for completion in mid-1989) be completed, reviewed and found acceptable by EPA prior to promulgation of the final test rule, this test standard will not be finalized.

EPA has reviewed all of the available studies and found them insufficient to reasonably predict the mutagenic potential of HDI. There were no studies on the reproductive or developmental toxicology of HDI in laboratory animals in the available literature, therefore assessment of the fetotoxic potential can not be done. There were no studies on the neurotoxic potential of HDI laboratory animals in the available literature, therefore neurotoxic assessment cannot be done. (Ref. 2).

EPA has recently received data on the subchronic toxicity of HDI (Ref. 6). These data have been reviewed by EPA and found to be adequate. Therefore EPA is not proposing subchronic testing of HDI.

EPA also finds that there are insufficient data to reasonably predict and compare the absorption, distribution, metabolism, and excretion of HDI in the body as a result of dermal, oral, and inhalation exposure due to HDI manufacture, prosessing, and use. Data on the pharmacokinetics of HDI were not located in the available literature, therefore the absorption, distribution, metabolism and excretion of HDI cannot be determined. (Ref. 2).

EPA finds that available data are insufficient to reasonably determine or predict the rate of hydrolysis of HDI by water vapor in the gas phase. Identifying the rate of hydrolysis of HDI is necessary to determine the availability of HDI for absorption to humans. (Ref. 2).

### *D. Testing is Necessary*

EPA believes that the testing of HDI for effects noted in Unit III.C. will be relevant to a determination of whether HDI manufacture, processing and use does or does not present an unreasonable risk of injury to human health and the environment. EPA believes that the testing proposed in this proposed test rule will provide data sufficient to make such a determination.

## IV. Proposed Rule

### *A. Proposed testing and Test Standards*

EPA is proposing that testing be conducted in accordance with specific test guidelines set forth in 40 CFR Parts 795 and 798. All persons conducting tests would conduct tests in accordance with the TSCA Good Laboratory Practice (GLP) Standards (40 CFR 792). The specific tests EPA is proposing are set forth in proposed § 799.2145 and are identified in the table in Unit IV.D. of this preamble.

The tiered testing schemes for mutagenicity are discussed in detail in the final test rule for the $C_8$ aromatic hydrocarbon fraction (50 FR 20662; May 17, 1985). Modifications to the MVSL including the option of substitution the MBSL for the MVSL and the MBSL test procedures were proposed in the Federal Register notice of December 23, 1988 (53 FR 51847) and are incorporated into this proposed rule.

EPA believes that pharmacokinetics testing is necessary to reduce uncertainties associated with the extrapolation of toxicity test data from high to low doses, from species to species, and from one route of exposure to another. However, EPA is currently reviewing its pharmacokinetics testing guideline and will propose a specific test in a separate Federal Register notice.

To assess the chemical fate of HDI in the atmosphere, EPA is proposing hydrolysis testing. In the absence of an existing standard testing protocol for testing gas-phase hydrolysis rates of diisocyanates in the atmosphere, EPA is proposing that the determination of the rate of hydrolysis of HDI in air be conducted in accordance with Holdren et al. (Ref. 4).

### *B. Test Substance*

EPA is proposing that HDI of at least 98 percent purity be used as the test substance. EPA has specified a relatively pure substance for testing because EPA is interested in evaluating the effects attributable to HDI itself. EPA believes that this grade of HDI is readily available for testing purposes.

*C. Persons required to test*

Because EPA has found that there are insufficient data and experience to reasonably determine or predict the effects on human health of the manufacture, processing, and use of HDI, EPA is proposing that persons who manufacture and/or process, or who intend to manufacture and/or process HDI, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements in this proposed rule. This period is defined in 40 CFR 791.3(h). While EPA has not identified any byproduct manufacturers of HDI, such persons would be covered by the requirements of this test rule.

Manufactures, including importers potentially subject to the final rule should consult the procedures in 40 CFR Part 790. Processors subject to the final rule, unless they are also manufacturers, would not be required to submit letters of intent or exemption applications, but should consult 40 CFR Part 790 for additional details.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for HDI because EPA is interested in evaluating the effects attributable to HDI itself and has specified a relatively pure substance for testing.

*D. Reporting Requirements*

As required in 40 CFR 799.10, all data developed under the final rule would be reported in accordance with its TSCA GLP Standards which appear in 40 CFR Part 792. In addition 40 CFR Part 790 requires test sponsors to submit individual study plans at least 45 days prior to the initation of each study.

As required by section 4(b)(1)(C) of TSCA, EPA is proposing specific reporting requirements for each of the proposed tests for HDI shown in the following table.

TABLE—PROPOSED TESTING, TEST STANDARDS, AND REPORTING REQUIREMENTS FOR HDI

| Test | Test standard (40 CFR citation) | Reporting deadline for final report [1] | Interim (6-month) reports required |
|---|---|---|---|
| Chronic toxicity: | | | |
| 1. Oncogenicity | § 798.3300 | 53 | 8 |
| Specific organ/tissue toxicity: | | | |
| 2. Reproduction and fertility effects | § 798.4700 | 29 | 4 |
| 3. Developmental toxicity (oral) | § 798.4900 | 12 | 1 |
| Gene toxicity: | | | |
| Gene mutations: | | | |
| 4. *Salmonella typhimurium* | § 798.5265 | 9 | 1 |
| 5. Mammalian cells in culture | § 798.5300 | 19 | 2 |
| 6. *Drosophila* sex-linked recessive lethal | § 798.5275 | 31 | 4 |
| 7. Mouse visible specific locus or Mouse biochemical specific locus test | § 798.5200 or § 795.5195 [2] | 51 | 8 |
| Chromosomal aberrations: | | | |
| 8. *In vitro* cytogenetics | § 798.5375 | 10 | 1 |
| 9. *In vitro* cytogenetics | § 798.5385 | 24 | 3 |
| 10. Dominant lethal assay | § 798.5450 | 36 | 5 |
| 11. Heritable translocation assay | § 798.5460 | [3] 25 | 4 |
| Acute neurotoxicity: | | | |
| 12. Functional observation battery | § 798.6050 | 9 | 1 |
| 13. Motor activity | § 798.6200 | 9 | 1 |
| Subchronic neurotoxicity: | | | |
| 14. Functional 90-day observation battery | § 798.6050 | 21 | 3 |
| 15. Motor activity | § 798.6200 | 21 | 3 |
| 16. Neuropathology | § 798.6400 | 21 | 3 |
| Chemical fate: | | | |
| 17. Hydrolysis | Holdren (Ref. 4) | 12 | 1 |

[1] Number of months after the effective date of the final rule, except as indicated.
[2] MVSL/MBSL Guideline proposed in 53 FR 51847 (December 23, 1988).
[3] Figure indicates the reporting deadline, in months, calculated from the date of notification of the test sponsor by certified letter of **Federal Register** notice that, following public program review of all of the then existing data for HDI, EPA has determined that the required testing must be performed.

## V. Issues for Comment

1. This proposed rule specifies TSCA test guidelines as the test standards for health effects testing of HDI. EPA is soliciting comments as to whether these test guidelines are appropriate and adequate to characterize the health effects of HDI. EPA specifically requests comments on whether EPA's proposed combined chronic toxicity/oncogenicity (40 CFR 798.3320) guideline is appropriate and should be required in place of the oncogenicity guideline (40 CFR 798.3300). The provisions of this guideline are designed primarily for use with the rat as the test species. The use of this combined guideline would reflect EPA's concern for long-term low-dose chronic effects of HDI that may not be adequately characterized by subchronic testing alone. Oncogenicity testing in a second species would also be required.

2. EPA requests comments on the potential for HDI to hydrolyze in the atmosphere. Based on the data reported by Holdren et al. (Ref. 4) for toluene diisocyanate (TDI), EPA believes that the hydrolysis rate of HDI in the gas phase with low to moderate humidity (7 to 70 percent) will be slow relative to the hydrolysis rate in an aqueous phase. EPA solicits comments on the use of the method reported by Holdren (Ref. 4) to assess the hydrolysis rate in a gas phase with moderate to high humidity (70 to 100 percent).

3. EPA requests comments on the route of exposure for testing. EPA is proposing that most of the tests be conducted by inhalation because it is the most relevant route for human exposure to HDI. However, because of technical problems associated with certain TSCA test guidelines (i.e., reproductive effects and developmental toxicity), and the desire to choose a route of administration and vehicle that will assure that the dose is received by the target tissues, EPA is proposing exposure by gavage for reproductive effects and developmental toxicity. EPA requests comments on this approach

and also on the route of exposure for the mutagenicity screens. In addition should the inhalation route of entry be selected for the developmental toxicity study after the completion of the pharmacokinetics study if the pharmacokinetics study reveals significant metabolic differences between inhalation and gavage exposures? EPA also requests comments on an appropriate vehicle (e.g. corn oil) for the gavage studies.

4. EPA requests comments on the adequacy of the genetic toxicity testing scheme, in particular the use of bone marrow assays for a highly reactive substance such as HDI. Would cytogenetic assays such as those involving peripheral blood lymphocytes or lung cells following *in vivo* exposures be useful or be in a sufficient stage of development and validation to provide useful information?

5. Diisocyanates are known to be highly reactive biologically, with HDI known to be a respiratory and dermal irritant and sensitizer. EPA requests comments on the role these properties will pay in selecting an appropriate animal model for testing, and what additional testing may be needed to assess these effects in humans.

6. EPA requests comments on the reporting requirements (schedules) for the cited guidelines.

## VI. Economic Analysis of the Proposed Rule

To assess the potential economic impact of this rule, EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on the industry as a result of the proposed testing. (Ref. 3)

Total testing costs for the proposed testing of HDI are estimated to range from $2.3 to 3.3 million. To predict the financial decisionmaking practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period to finance the testing expenditure in the first year.

The annualized test costs, using a 7 percent cost of capital over a period of 15 years, range from $251,700 to $362,000. The production volume and price information have been claimed confidential and are contained in the economic analysis which is being treated as CBI.

## VII. Availability of Test Facilities and Personnel

As required by section 4(b)(1) of TSCA, EPA has conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and found that there will be available test facilities and personnel to perform the testing specified in this proposed rule. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (PB 82–140773). A copy of this study is contained in the rulemaking record for this proposed rule.

## VIII. Public Meeting

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting after the close of the public comment period in Washington, DC. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): (202) 554–1404 by July 3, 1989. No meeting will be held unless members of the public indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, EPA will transcribe the meeting and include the written transcript in the rulemaking record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

## IX. Comments Containing Confidential Business Information

Any person who submits comments which the person claims as Confidential Business Information (CBI) must mark the comments as confidential. Comments not claimed as confidential at time of submission will be placed in the public file. Any comments marked confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any person submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

## X. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS–42107). This record contains the basic information considered by EPA in developing this proposal and appropriate Federal Register notices. EPA will supplement this record with additional relevant information, as necessary.

CBI, while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Room, Rm. G–004, NE Mall, 401 M St. SW., Washington, DC 20460, from 8 am to 4 pm, Monday through Friday, except legal holidays. EPA will supplement this record periodically with additional information received.

The record includes the following information:

*A. Supporting Documentation*

(1) Federal Register notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of HDI to the Priority List (53 FR 18136; May 20, 1988) and all comments on HDI received in response to that notice.

(b) Rules requiring TSCA section 8(a) (53 FR 18211; May 20, 1988) and 8(d) reporting (52 FR 16022; May 1, 1987) on HDI.

(c) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(d) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(e) Interim Final Rule: Procedures Governing Testing Consent Agreements and Test Rules Under the Toxic Substances Control Act (40 CFR Part 790).

(2) Support documents consisting of:

(a) Technical support document for proposed rule.

(b) Economic impact analysis of proposed rule for HDI.

(3) TSCA test guidelines cited as test standards for this rule.

(4) Communications before proposal consisting of:

(a) Written public comments and letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(5) Reports—published and unpublished factual materials including Chemical Testing Industry: Profile of Toxicological Testing (October, 1981).

(6) Data received under section 8(a) of TSCA.

*B. References*

(1) Dynamac Corporation. "Information Review 1,6-diisocyanatohexane," IR–323. Rockville, MD. (June 24, 1988).

(2) Syracuse Research Corporation. "Review of Some Critical Studies on 1,6-

Hexamethyl Diisocyanate," Syracuse, NY. (July 8, 1988).

(3) EPA. "Economic Impact Analysis of Proposed Test Rule—Hexamethylene Diisocyanate, Non Confidential version", Washington, DC (April 13, 1989).

(4) Holdren, M.W., Spicer, C.W., Riggin, R.M. "Gas Phase Reaction of Toluene Diisocyanate with Water Vapor", *American Industrial Hygiene Association Journal.* 45:626–633 (1984).

(5) Letter from F. J. Rattay, Manager, Regulatory Compliance, Mobay Corporation, Pittsburgh, PA, to R. Brink, TSCA Interagency Testing Committee. (January 21, 1988)

(6) Mobay Corporation. "90-day Inhalation Toxicity Study With 1,6 Hexamethylene Diisocyanate (HDI) in Rats," Study Number 81–141–01, (December 28, 1988) (EPA No. 86–89000080).

## XI. Other Regulatory Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this proposed test rule would not be major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it would not have an annual effect on the economy of at least $100 million, would not cause a major increase in prices, and would not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, would not have a significant impact on a substantial number of small businesses because: (1) They would not be expected to perform testing themselves, or to participate in the organization of the testing effort; (2) they would experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

### *C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 1027 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total public reporting burden is estimated to be 17,454 hours for all responses.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

### List of Subjects in 40 CFR Part 799

Chemicals, Environmental protection, Hazardous substances, Testing, Laboratories, Recordkeeping and reporting requirements, Incorporation by reference.

Dated: May 2, 1989.

**Charles Elkins,**

*Acting Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, it is proposed that 40 CFR Part 799 be amended as follows:

## PART 799—[AMENDED]

a. The authority citation for Part 799 would continue to read as follows:

**Authority:** 15 U.S.C. 2603, 2611, 2625.

b. By adding § 799.2145 to read as follows:

### § 799.2145 1,6-Hexamethylene diisocyanate.

(a) *Identification of test substance.* (1) 1,6-Hexamethylene diisocyanate (HDI) (CAS No. 822–06–0) shall be tested in accordance with this section.

(2) HDI of at least 98 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import or byproduct manufacture) or process HDI other than as an impurity from (44 days after the publication date of the final rule in the **Federal Register**) to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests, and submit data or submit exemption applications as specified in this section, Subpart A of this part, and Parts 790 and 792 of this chapter for single-phase rulemaking.

(c) *Health effects testing*—(1) *Oncogenicity*—(i) *Required testing.* An oncogenicity test shall be conducted with HDI by inhalation using the Fischer 344 rat and one other rodent species in accordance with § 798.3300 of this chapter.

(ii) *Reporting requirements.* (A) The oncogenicity test shall be completed and the final report submitted to EPA within 53 months of the effective date of the final rule.

(B) Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final rule until submission of the final report.

(2) *Reproduction and fertility effects*—(i) *Required testing.* A reproduction and fertility effects test shall be conducted by gavage in corn oil with HDI in accordance with § 798.4700 of this chapter.

(ii) *Reporting requirements.* (A) The reproduction and fertility effects test shall be completed and the final report submitted to EPA within 29 months of the effective date of the final rule.

(B) Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final rule until submission of the final report.

(3) *Developmental toxicity*—(i) *Required testing.* A developmental toxicity test shall be conducted by gavage with HDI in accordance with § 798.4900 of this chapter.

(ii) *Reporting requirements.* (A) The developmental toxicity test shall be completed and the final report submitted to EPA within 12 months of the effective date of the final rule.

(B) Progress reports shall be submitted 6 months after the effective date of the final rule until submission of the final report.

(4) *Mutagenic effects—gene mutations*—(i) *Required testing.* (A) A *Salmonella typhimurium* reverse mutation assay shall be conducted with HDI both with and without metabolic activation in accordance with § 798.5265 of this chapter.

(B) A gene mutation test in mammalian cells shall be conducted with HDI both with and without metabolic activation as specified in § 798.5300 of this chapter if the results from the *Salmonella typhimurium* test conducted pursuant to paragraph (c)(4)(i)(A) of this section are negative.

(C) (*1*) A sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with HDI in accordance with § 798.5275 of this chapter except for the provisions in paragraphs (d)(5) (ii) and

(iii) of § 798.5275, unless the results of both the *Salmonella typhimurium* test conducted pursuant to paragraph (c)(4)(i)(A) of this section and the mammalian cells in the culture gene mutation test conducted pursaunt to paragraph (c)(4)(i)(B) of this section, if required, are negative.

(*2*) [*Reserved*]

(D) (*1*) A mouse visible specific locus test or a mouse biochemical specific locus test shall be conducted with HDI by inhalation in accordance with § 798.5200 of this chapter except for the provisions in paragraph (d)(5)(iii) of § 798.5200, or in accordance with § 798.5195 of this chapter except for the provisions in paragraph (d)(5)(iii) of § 798.5195 of this chapter, if the results of the sex-linked recessive lethal test conducted pursuant to paragraph (c)(4)(i)(B) of this section are positive and if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Dose levels.* The duration of exposure shall be for 6 hours per day.

(*ii*) *Route of administration.* Animals shall be exposed to HDI by inhalation.

(ii) *Reporting requirements.* (A) The gene mutation tests shall be completed and final report submitted to EPA as follows:

(*1*) The *Salmonella typhimurium* reverse mutation assay within 9 months of the effective date of the final rule.

(*2*) The gene mutation in mammalian cells assay within 19 months of the effective date of the final test rule.

(*3*) The sex-linked recessive-lethal test in *Drosophila melanogaster* within 31 months of the effective date of the final rule.

(*4*) The mouse visible specific-locus test or mouse biochemical specific locus test within 51 months of the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice under paragraph (c)(4)(i)(C) of this section that testing shall be initiated.

(B) Progress reports shall be submitted to EPA for the *Drosophila* sex-linked recessive lethal test 6 month intervals beginning 6 months after the effective date of the final rule until the submission of the final report.

(C) Progress reports shall be submitted to EPA for the mouse visible specific locus test or mouse biochemical specific locus test at 6-month intervals beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated until submission of the final report.

(5) *Mutagenic effects—chromosomal aberration*—(i) *Required testing.* (A) An *in vitro* cytogenetics test shall be conducted with HDI in accordance with § 798.5375 of this chapter.

(B) (*1*) An *in vivo* cytogenetics test shall be conducted with HDI in accordance with § 798.5385 of this chapter except for the provisions in paragraphs (d)(5) (iii) and (iv), if the *in vitro* test conducted pursuant to paragraph (c)(5)(i)(A) of this section is negative.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed to HDI by inhalation.

(*ii*) *Treatment schedule.* The duration of exposure shall be for 6 hours per day for 5 consecutive days with one sacrifice time or for 6 hours per day for 1 day with 3 sacrifice times.

(C) (*1*) A dominant lethal assay shall be conducted with HDI in accordance with § 798.5450 of this chapter except for the provisions in paragraphs (d)(5) (ii) and (iii), unless both the *in vitro* and *in vivo* cytogenetics tests conducted pursuant to paragraphs (c)(5)(i) (A) and (B) of this section are negative.

(*2*) For purposes of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed by inhalation.

(*ii*) *Treatment schedule.* The duration of exposure shall be for 6 hours per day for 5 consecutive days.

(D) (*1*) A heritable translocation test shall be conducted with HDI in accordance with § 798.5460 of this chapter except for the provisions in paragraphs (d)(5) (ii) and (iii), of the results of the dominant lethal assay conducted pursuant to paragraph (c)(5)(i)(C) of this section are positive and if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test specifying that the testing shall be initiated.

(*2*) For the purposes of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed to HDI by inhalation.

(*ii*) [Reserved]

(ii) *Reporting requirements.* (A) The chromosomal aberration tests shall be completed and the final reports submitted to EPA as follows:

(*1*) The *in vitro* cytogenetics test within 10 months of the effective date of the final rule.

(*2*) The *in vivo* cytogenetics test within 24 months of the effective date of the final rule.

(*3*) The dominant lethal assay within 36 months of the effective date of the final rule.

(*4*) The heritable translocation test within 25 months of the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice under paragraph (c)(6)(i)(D) of this section that testing shall be initiated.

(B) Progress reports shall be submitted to EPA for the *in vitro* cytogenetics, the *in vivo* cytogenetics, and the dominant lethal assays at 6-months intervals beginning 6 months after the effective date of the final rule until submission of the applicable final report.

(C) Progress reports shall be submitted to EPA for the heritable translocation assay at 6-month intervals beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated until submission of the final report.

(6) *Neurotoxicity*—(i) *Required testing.* (A)(*1*) An acute and subchronic functional observation battery shall be conducted with HDI in accordance with § 798.6050 of this chapter except for the provisions in paragraphs (d) (5) and (6) of § 798.6050.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Duration and frequency of exposure.* For the acute study, animals shall be dosed for 4 to 6 hours once. For the subchronic study, animals shall be dosed for 6 hours per day, 5 days per week for 90 days.

(*ii*) *Route of exposure.* For the acute and subchronic studies, animals shall be exposed to HDI by inhalation.

(B) (*1*) An acute and subchronic motor activity test shall be conducted with HDI in accordance with § 798.6200 of this chapter except for the provisions in paragraph (d) (5) and (6) of § 798.6200.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Duration and frequency of exposure.* For the acute study, animals shall be dosed for 4 to 6 hours once. For the subchronic study, animals shall be dosed for 6 hours per day, 5 days per week for 90 days.

(ii) *Route of exposure.* For the acute and the subchronic studies, animals shall be exposed to HDI by inhalation.

(C)(*1*) A neuropathology test shall be conducted with HDI in accordance with § 798.6400 of this chapter except for the provisions in paragraphs (d) (5) and (6) of § 798.6400

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Duration and frequency of exposure.* Animals shall be dosed for 6 hours per day, 5 days per week for 90 days.

(*ii*) *Route of exposure.* Animals shall be exposed to HDI by inhalation.

(ii) *Reporting requirements.* (A) The subchronic functional observation battery, subchronic motor activity, and neuropathology tests shall be completed and the final reports submitted to EPA within 21 months of the effective date of the final rule.

(B) The acute functional observation battery and acute motor activity tests shall be completed and the final reports submitted to EPA within 9 months of the effective date of the final rule.

(C) Progress reports shall be submitted to EPA for the acute and subchronic functional observation battery, acute and subchronic motor activity, and neuropathology tests at 6-month intervals beginning 6 months after the effective date of the final rule until submission of the applicable final report.

(7) *Pharmacokinetics Testing*—[Reserved]

(d) *Chemical fate testing—Hydrolysis*—(1) *Required testing.* A rate of hydrolysis in the gaseous phase shall be conducted with HDI in accordance with the test guideline by M.W. Holdren, C.W. Spicer, and R.M. Riggens entitled, "Gas Phase Reaction of Toluene Diisocyanate with Water Vapor" and published in: *American Industrial Hygiene Association Journal,* 45:626–633 (1984) which is incorporated by reference. This method is available for inspection at the Office of Federal Register, Rm. 8301, 1100 L St. NW., Washington, DC 20408 and copies may be obtained from the EPA TSCA Public Docket Office, Rm. NE G–004, 401 M Street SW., Washington, DC 20460. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. This material is incorporated as it exists on the effective date of this section and a notice of any change in this material will be published in the **Federal Register.** Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE–G004, 401 M Street SW., Washington DC, 20460.

(2) *Reporting requirements.* (i) The hydrolysis in the gaseous phase test shall be completed and the final report submitted to EPA within 12 months of the effective date of the rule.

(ii) A progress report shall be submitted to EPA for the hydrolysis test 6 months after the effective date of the final rule.

(e) *Effective dates.* (1) This rule shall become effective 44 days after date of publication of the final rule in the **Federal Register.**

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the final rule.

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070–0033)

[FR Doc. 89–11824 Filed 5–16–89; 8:45 am]

BILLING CODE 6560–50–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 46 CFR Parts 10 and 15

[CGD 81–059a]

RIN 2115–AB91

## Licensing of Officers and Operators for Mobile Offshore Drilling Units

**AGENCY:** Coast Guard, DOT.

**ACTION:** Supplemental Notice of Proposed Rulemaking

**SUMMARY:** This supplemental notice deals solely with the licensing of officers on mobile offshore drilling units (MODUs) and the manning of these vessels. This proposal would replace the Interim Final Rule published on October 16, 1987 (52 FR 38660). The effective date of that Interim Final Rule was suspended indefinitely on February 28, 1989 (54 FR 8334). The licensing structure implements National Transportation Safety Board (NTSB) recommendations for the establishment of personnel qualifications and manning regulations for this type of vessel. Compliance with these minimum standards will ensure that qualified individuals are on board to deal with marine safety related matters.

**DATE:** Comments must be received on or before June 16, 1989.

**ADDRESSES:** Comments should be submitted to: The Executive Secretary, Marine Safety Council (G–LRA–2) [CGD 81–059a] U.S. Coast Guard, Washington, DC 20593–0001. Between 8:00 a.m. and 3:00 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G–LRA–2), Room 3600, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–1477.

**FOR FURTHER INFORMATION CONTACT:** LCDR Gerald D. Jenkins, Project Manager, Office of Marine Safety, Security and Environmental Protection, (G–MVP), phone (202) 267–0224.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Written comments should include the name and address of the person making them, identify this notice [CGD 81–059a], the specific section of the proposal to which the comment applies, and the reason for the comment. Persons desiring an acknowledgement that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments received before expiration of the comment period will be considered before final action is confirmed.

### Drafting Information

The principal drafters of this supplemental notice are: LCDR Gerald D. Jenkins, Office of Merchant Marine Safety, Security and Environmental Protection, and CDR Gerlad A. Gallion, Office of Chief Counsel.

### Background

The Notice of Proposed Rulemaking to completely revise licensing regulations in Part 10 of Title 46, Code of Federal Regulations, published on August 8, 1983 (48 FR 35920) included proposed rules which formalized the special industry licenses and extended their application to all mobile offshore drilling units. As a result of comments received, a separate Supplemental Notice of Proposed Rulemaking concerning the licensing of officers on MODUs and the manning of these vessels was published on October 24, 1985 (50 FR 43366). The Coast Guard received generally good support from the mobile offshore drilling industry. Forty-five specific written comments were submitted and the International Association of Drilling Contractors (IADC) provided the detailed MODU On-Board Marine Task Analysis Report. An Interim Final Rule was published on October 16, 1987 (52 FR 38660). The Coast Guard received fifteen written comments to the Interim Final Rule. These comments demonstrate that additional changes were necessary in order to adequately address several subjects. This supplemental notice revises the offshore installation manager qualifications and MODU manning levels. It also provides a procedure by which unlicensed individuals currently serving in positions requiring licenses can obtain the required credentials.

### Specific Comment Areas

1. *Effective date of regulations.* The nature of the comments made to the previously published Interim Final Rule demonstrate that extensive changes to the rulemaking are appropriate. To facilitate public comment on these

changes, the Coast Guard has decided to publish a second supplemental notice of proposed rulemaking (SNPRM). Although the previously published Interim Final Rule did not go into effect on April 1, 1989, as anticipated, the Coast Guard is committed to publishing a final rule as soon as possible. When the Final Rule is published the Coast Guard will adjust the effective dates to permit the public adequate time in which to meet these regulatory requirements.

2. *MODU deck licenses.* In response to comments suggesting a need to distinguish between the qualification requirements for various offshore installation manager (OIM) endorsements, the Coast Guard proposes to establish five different endorsements: OIM Unrestricted, OIM Surface Units on Location, OIM Surface Units Underway, OIM Bottom Bearing Units on Location, and OIM Bottom Bearing Units Underway. The experience, training and examination requirements have been differentiated based upon the skills required.

Five comments suggested that any college degree be accepted, in lieu of the required engineering degree from a recognized school of technology accredited by the Accreditation Board of Engineering and Technology (ABET), as a means of qualifying for a MODU license. The Coast Guard believes that the degree should be a technical one received through a recognized school of technology, not any degree received through an accredited college. The ABET accreditation requirement is used elsewhere in the licensing regulations and eliminates the need for the Coast Guard to evaluate these programs.

Three comments stated that the proposed physical requirements for color sense and visual acuity were too restrictive and should be relaxed for OIM license applicants. The Coast Guard does not agree with this recommendation. The regulations established in the Final Rule to Part 10 published January 4, 1989 (54 FR 125) allow applicants for OIM, BS, or BCO license to meet the color and vision standards of licensed engineers. Because the engineer color sense and visual acuity requirements are less stringent than the deck license requirements, and many vessel systems are color coded, the Coast Guard believes that further relaxation is unwarranted. Individuals not meeting these standards still have the option of seeking a vision waiver under the provisions of § 10.205(d)(4).

One comment suggested that the positions of assistant driller, electrician, crane operator, and ballast control operator be deleted from the list of identified supervisory positions for OIM qualifying experience because they did not have sufficient supervisory responsibilities to meet the experience needs of an OIM. The Coast Guard believes these positions should be retained on the list of identified supervisory positions because the responsibility and supervisory nature of the associated duties allow their companies to evaluate the responsibility of the individual. The Coast Guard interprets the receipt of only one unfavorable comment as an indication of the mobile offshore drilling industry's concurrence with the proposal.

Three comments requested the Coast Guard clarify whether the holder of an OIM, BS or BCO license could satisfy the lifeboatman requirement on a mobile offshore drilling unit. Since 46 CFR 109.323 requires licensed officers or lifeboatmen to be in command of a lifeboat or inflatable liferaft, and OIMs, BSs, and BCOs are licensed officers, they can be counted as lifeboatmen for a MODU's lifeboatman requirement.

Several comments suggested that the Interim Final Rule allowing a licensed unlimited master, chief mate, or second mate to qualify for an OIM license endorsement with six months of MODU service be revised by deleting the position of second mate. The comments stated that only those individuals holding an unlimited master or chief mate license possess the requisite experience which should allow an individual to qualify as OIM using this limited service requirement. The Coast Guard agrees and has amended the supplemental proposed rulemaking accordingly.

3. *Rig-mover concept.* In response to the Coast Guard's solicitation in the Interim Final Rule for additional comment on the rig-mover concept, many comments recommended specific qualifications for a rig-mover to obtain a license as OIM Underway. These recommendations have been adopted and are included in proposed § 10.470. As proposed, to qualify for the OIM license, a rig-mover must be recommended as qualified by a senior company official, have completed the required training courses, and have completed a minimum number of MODU moves.

The commenters differed as to the minimum number of rig moves that they believed should be required to qualify an applicant for an OIM Unrestricted or Underway license. The Coast Guard reviewed the recommendations and believes that the rig-mover should participate in a minimum of ten rig moves as an observer in training or as a rig-mover under supervision, and direct a minimum of five rig moves while under the supervision of an experienced rig-mover. License applicants currently serving as rig movers would be required to document having participated in ten rig moves, of which the applicant had directed at least five.

4. *Conversion of master/mate MODU licenses to the new OIM/BS/BCO licenses.* Six comments requested that the Coast Guard establish specific policy on converting master MODU or mate MODU licenses, issued since 1973, to those MODU licenses issued under the new system. The Coast Guard proposes to require that a master MODU or mate MODU be converted to the new licenses for offshore installation manager (OIM), barge supervisor (BS), or ballast control operator (BCO). Under the proposal, personnel holding master MODU or mate MODU licenses will not be required to be examined in order to convert their licenses. They must, however, present evidence of the required qualifying services and completion of the appropriate required training courses.

In some cases a licensed master MODU or mate MODU not having the qualifying service to convert to a new MODU license may already be serving in a position requiring the new license. In such a situation, the Coast Guard will consider issuing a limited license authorizing service in that position on that particular vessel.

5. *Drilling safety course.* In the Interim Final Rule the Coast Guard requested comments concerning possible requirements for training courses in blowout prevention and well control, hydrogen sulfide, and drilling equipment safety and management. The Coast Guard was concerned that the personnel aboard MODUs operating in foreign waters would not receive the same level of training in these subjects as required by U.S. Minerals Management Service (MMS) regulations for personnel aboard MODUs operating on the Outer Continental Shelf of the United States.

Five comments suggested that such courses were necessary for marine crews working upon U.S. certificated vessels in foreign waters. The Coast Guard agrees in part with the recommendations to require this training. The Coast Guard believes that OIM licensed personnel aboard MODUs operating outside the U.S. Outer Continental Shelf should be knowledgeable of the material covered by the MMS regulations for blowout prevention and well control training. Therefore, the Coast Guard has added this requirement to the proposed

qualifications for OIM licenses authorizing service on location.

With regard to hydrogen sulfide training, the Coast Guard believes that since the MMS requires the lessee, rather than the person in charge of a MODU, to be responsible for implementing the onboard training requirements for hydrogen sulfide, this course should not be included in the qualifications for an OIM license. However, the Coast Guard is currently drafting an NPRM to revise the regulations of MODUs (CGD 83-071a), which is expected to be published this year. The Coast Guard will consider including regulations concerning the special procedures necessary in the event of a hydrogen sulfide release, to insure that they are available to all personnel on board.

After review of the contents of the drilling equipment safety and management course, the Coast Guard believes that much of the subject matter is repetitive of information contained in the blowout prevention and well control course curriculum, and will not, therefore, include this course in the qualification requirements for an OIM license.

One comment stated that drilling safety courses, e.g., blowout prevention and well control, are appropriate only for the drilling crews and not the marine crews aboard a MODU. The commenter suggested that if an OIM who is not a toolpusher needed drilling safety knowledge he would consult an experienced member of the drilling crew. The Coast Guard agrees that the OIM should consult with those personnel who are experts in drilling operations aboard a MODU. However, in addition to this expert advice, the person-in-charge, the OIM, should possess a basic knowledge of drilling operations which can best be achieved through the completion of a drilling safety course.

One comment suggested that only mariners with unlimited licenses serving upon MODUs need to complete drilling safety courses. The Coast Guard does not agree. It is possible that OIM qualifying service in a MODU supervisory position such as crane operator or ballast control operator may provide an applicant with little or no knowledge of the subjects incorporated in a drilling safety course. Also, drilling personnel aboard MODUs operating in the Outer Continental Shelf of the United States have for years been required, under MMS regulations, to complete drilling safety programs. This is not a new training requirement. The Coast Guard is only proposing to extend an existing requirement to those licensed personnel working aboard U.S. MODUs operating outside the U.S. Outer Continental Shelf.

6. *Method for certifying blowout prevention and well control training.* All the comments which discussed the approval or acceptance scheme for drilling safety courses advocated the use of industry certified, rather than government approved, training programs. Currently, the MMS requires that blowout prevention and well control courses for MODU drilling personnel operating on the U.S. Outer Continental Shelf be approved by the MMS. The Coast Guard believes this MMS course approval requirement should be retained for the MODU licenses.

7. *Unlicensed personnel currently serving.* Four comments recommended the 'grandfathering' of unlicensed personnel currently serving in positions on MODUs which will require licensed individuals should the proposed regulations become effective. The Coast Guard agrees that some provisions should be made in order to mitigate the impact on the industry of requiring licensed MODU personnel and to facilitate the continued employment of personnel currently serving aboard MODUs. Therefore, the Coast Guard proposes to establish a temporary licensing procedure for those individuals who, between August 1, 1986 and August 1, 1989, served on MODUs in a capacity equivalent to OIM, BS, or BCO. Proposed § 10.478 has been added to Part 10 reflect this change.

Additional comment is solicited on means by which a more effective temporary license procedure might be established.

8. *Coast Guard course guidelines.* The Coast Guard is currently drafting the proposed guidelines for Coast Guard approved courses in MODU stability and MODU survival suits and survival craft. These guidelines are being based on courses currently approved by the Coast Guard and working papers drafted by organizations such as the IADC and the IMO. The Coast Guard intends to release these guidelines to the mobile offshore drilling industry for comment following the publishing of this SNPRM. Anticipating the mobile offshore drilling industry's concern that the currently established industry training schools would be unable to establish programs meeting the course guidelines by the effective date of these regulations, the Coast Guard has added § 10.476 to this SNPRM. Section 10.476 provides for the acceptance of similar, nonapproved courses until January 1, 1991. The Coast Guard believes this will allow the training schools sufficient time to augment these courses into their existing training programs without undue hardship to either the license applicant or the mobile offshore drilling industry.

9. *MODU stability course.* Five comments stated that the terminology, "basic and advanced", should be removed from the course title as it implied that two stability courses, a basic and an advanced, were required for all OIM licenses. The Coast Guard understands that there might be some confusion on this matter and has proposed to amend the course designations accordingly. Three comments suggested changing the current format of the proposed stability course to a form more in line with International Association of Drilling Contractors' course standard entitled, "Training and Certification of Ballast Control System Operators on Column Stabilized Mobile Offshore Drilling Units", which was submitted to the Coast Guard on December 4, 1984, in connection with the MODU Marine Task Analysis Report. The Coast Guard is currently drafting the guidelines for a MODU stability course based on that IADC proposal and the International Maritime Organization preliminary draft assembly resolution, STW 20/WP.3, entitled "Recommended Standards of Specialized Training, Qualifications, and Certification of Key Personnel Assigned Responsibility for Essential Marine Functions on Mobile Offshore Units". It is anticipated that these guidelines will provide for four different stability courses: OIM surface unit, OIM bottom bearing unit, Barge Supervisor, and Ballast Control Operator. These guidelines will be distributed for industry review and comment prior to being finalized.

10. *Acceptance of foreign training courses.* Two comments stated that the Coast Guard should accept as meeting license qualification training requirements those training programs offered by companies abroad. Since these courses are available domestically, the Coast Guard proposes not to accept foreign courses. The Coast Guard may consider the subject at a future date if it appears that a valid and recognizable need exists to accept foreign courses in lieu of domestic training programs. However, the Coast Guard proposes to accept foreign courses which meet the guidelines of § 10.476 of this Part for license applications submitted prior to January 1, 1991.

11. *Development of MODU license examinations.* Three comments stated that development of the new MODU

license examinations should only be done by the mobile offshore drilling industry. The commenters stated that a private consulting firm, contracted by the Coast Guard, may not possess the experience necessary to accurately address the level of knowledge required for each license. The Coast Guard does not agree with this recommendation. Through periodic discussions held with the consulting firm to this project, the Coast Guard was advised that the IADC has been and continues to be offering its expertise in the formulation of this license examination package. By combining the experience of the offshore oil industry and the examination program skills of the contracted consulting firm, the MODU license exams will accurately reflect the subjects for which knowledge is required of an applicant seeking a MODU license.

12. *MODU engineering licenses.* Four comments suggested a reduction in the amount of employment required to qualify for either the chief engineer MODU or assistant engineer MODU license. The comments noted that qualifying experience requirements for engineer licenses were not consistent with that experience required for deck licenses. The Coast Guard agrees and in the proposal has reduced the amount of employment required for chief engineer MODU from six to four years, and for assistant engineer MODU from three to two years. Associated service has also been reduced accordingly. Reduction in the total required service, however, will prevent individuals with these licenses from serving on self-propelled units on voyages of more than 72 hours.

One comment requested that the qualifying experience requirements for chief engineer MODU and assistant engineer MODU include a provision allowing holders of unlimited chief engineer or assistant engineer of steam or motor vessels to qualify for a license. This is unnecessary since the unlimited licenses already authorize service on MODUs.

13. *Examination subject tables for MODU licenses.* Table 10.920, Subjects for MODU Deck Licenses, was revised to reflect the five OIM endorsement categories and include changes to the examination topics suggested by the consulting firm contracted by the Coast Guard to develop the new MODU examinations.

Table 10.950 was revised to coincide with the Table of Subjects for Engineering Licenses in the Final Rule for Part 10 (54 FR 125). As stated in the preamble to the Final Rule, the examination subject titles were revised to use language which, through previous regulatory use, is familiar to the industry.

14. *Single evaluation office for MODU license applications.* The Coast Guard anticipates that the initial application of these regulations will require a large number of interpretations and policy determinations. To facilitate timely action on these determinations and distribution to the field, the Coast Guard is considering a policy of requiring that the review and approval of all applications for the proposed MODU licenses be made by Regional Examination Center (REC), New Orleans, LA. Coast Guard statistics show that the majority of MODU license transactions are performed at that REC. As proposed, MODU license applicants could submit their application to any REC where it would be examined for completeness and then forwarded to REC New Orleans for evaluation. Approved applications would then be returned to the REC of the applicant's choice for examination administration, if applicable, and the license issuance.

Comments are solicited on additional means whereby a more effective license evaluation procedure might be established.

15. *Manning levels on MODUs.* Changes are proposed for the manning regulations as a result of comments received and in response to recent revisions to the manning statutes (Part F of Subtitle II of Title 46, U.S. Code). Additionally, these factors prompted adjustments being made to the manning scales which appeared in the preamble to the Interim Final Rule.

The statutory revisions modified 46 U.S.C. 8101 and 8301. These revisions require the Secretary of Transportation to consider the specialized nature of MODUs when establishing safe manning levels for these units (46 U.S.C. 8101), and delete the statutory minimum requirements for mates on MODUs of 1,000 or more gross tons (46 U.S.C. 8301). Accordingly, proposed § 15.520 and § 15.810 have been revised to specify carriage requirements for mates, barge supervisors, and ballast control operators on self-propelled MODUs.

Three comments stated that throughout the history of the offshore industry, a manning level of four able seamen and two ordinary seamen had been more than sufficient to meet all watchstanding requirements. These comments were a result of inclusion of six able seamen in certain of the self-propelled MODU manning scales. The Coast Guard believes that the unlicensed deck crew requirements for MODUs should not differ from the manning standards for conventional vessels. Therefore, these levels are retained in the manning scales. However, consistent with Coast Guard treatment of conventional vessels, the substitution of up to two specially trained ordinary seamen is allowed if certain criteria are met and the cognizant Officer in Charge, Marine Inspection (OCMI) is satisfied that the vessel can continue to be safely operated. These criteria are referenced in footnote (1) to the manning scales included in this preamble.

Three comments disagreed that a barge supervisor should be included in the required complement of self-propelled surface units. The Coast Guard agrees that a barge supervisor is intended for non-self-propelled units and has revised the manning scales and § 15.520 accordingly.

Three comments stated there was no need to require a barge supervisor on non-self-propelled surface units where the OIM is a licensed master. The Coast guard does not agree. Although a barge supervisor is required to have familiarity with marine related matters, this individual's duties are to support the OIM. The need for two separate individuals is particularly important in emergencies and in other situations where the OIM is fully employed.

Three comments suggested that on self-propelled units on location a mate only be required when the vessel is operating in remote geographic locations. Although the Coast Guard agrees that the geographic area of operations is an important factor for an OCMI to consider in determining a MODU's required complement, we believe that there will be situations when the presence of a licensed mate, in addition to the master, is necessary to ensure the vessel's safe operation. The requirement for this individual on self-propelled units on location is analagous to the requirement for a barge supervisor on a non-self-propelled unit in the same operating mode.

Five comments recommended that bottom bearing units on location not be required to have two able seamen and one ordinary seaman as indicated in the manning scales. The Coast Guard does not agree with this recommendation. Even when on location, a bottom bearing unit is subject to the vessel inspection requirements relating to installation and operation of equipment such as firefighting and lifesaving equipment. The requirements for the unlicensed deck crew will ensure the presence of individuals qualified in and capable of overseeing the operation and maintenance of this equipment.

One comment noted that paragraph 15.520(e) could be construed as requiring

ballast control operators on submersible and semi-submersible MODUs which are stacked. Depending on the circumstances, an OCMI might determine that ballast control operators are not necessary when the unit is stacked. Therefore, proposed paragraph 15.520(e) has been revised so as not to mandate carriage of these individuals on stacked units.

Other proposed changes include revisions to § 15.520 to:

(1) Emphasize the role of the OCMI in determining crew complements of inspected MODUs, including consideration of the specialized nature of the units. This revision is consistent with the requirements of 46 U.S.C. 8101 and 8301.

(2) Include a requirement that a drillship be under the command of a licensed master at all times. The Interim Final Rule required that a drillship, on location, be under the command of an individual who holds a license as master endorsed as OIM. Although the addition is a restatement of the requirement in § 15.805, it has been added to § 15.520 to clarify that a licensed master must be in command even when a drillship is not on location.

(3) Eliminate the reference in the Interim Final Rule, paragraph 15.520(j), relating to drillships underway meeting the same manning standards as conventional vessels. All MODUs, including drillships, must meet the applicable conventional vessel manning standards of Part 15 as modified by the requirements of § 15.520. Therefore, to avoid confusion, the specific reference to drillships has been deleted.

16. *Manning scales.* The following proposed manning scales have been revised in response to comments and statutory revisions, and would become part of our published policy in the Marine Safety Manual. It should be noted that, in comparison to the manning scales published in the preamble to the Interim Final Rule, the scale below does not provide for the substitution of MODU engineers for the licenses assistant engineers on self-propelled units on extended voyages, i.e., voyages of more than 72 hours. Such substitution is not considered appropriate in view of the reduced experience requirements in Part 10 of this proposal for individuals obtaining MODU chief and assistant engineer licenses.

*MODU Manning Scales*

A. Drillships underway—voyage of more than 72 hours:
1—Master
1—Chief Mate
1—Second Mate
1—Third Mate
6—Able Seamen (1)
1—Radio Officer (If required by the FCC)
1—Chief Engineer
*3—Assistant Engineers
*3—Oilers

B. Drillships underway—voyage of more than 16 but not more than 72 hours:
1—Master
2—Mates
4—Able Seamen
2—Ordinary Seamen
1—Radio Officer (If required by the FCC)
1—Chief Engineer
*2—Assistant Engineers (2)
*3—Oilers

C—Drillships underway—voyage of not more than 16 hours:
1—Master
1—Mate
3—Able Seamen
1—Ordinary Seamen
1—Radio Officer (If required by the FCC)
1—Chief Engineer
*1—Assistant Engineer
*2—Oilers

When engaged on a voyage of not more than 8 hours, the required crew may be reduced by 1 Able Seaman and 1 Oiler.

D. Drillships on location:
1—Master (With OIM endorsement)
1—Mate
2—Able Seamen
1—Ordinary Seamen
1—Radio Officer (If required by the FCC)
1—Chief Engineer
*1—Assistant Engineer (2)
*2—Oilers

E. Self-propelled surface units (other than drillships) underway—voyage of more than 72 hours:
1—Master (With OIM endorsement)
1—Chief Mate (With BS or BCO endorsement)
2—Mates (With BCO endorsements)
6—Able Seamen (1)
1—Radio Officer (If required by the FCC)
1—Chief Engineer
*3—Assistant Engineers
*3—Oilers

F. Self-propelled surface units (other than drillships) underway—voyage of more than 16 but not more than 72 hours:
1—Master (With IOM endorsement)
2—Mates (With BCO endorsements)
4—Able Seamen
2—Ordinary Seamen
1—Radio Officer (If required by the FCC)
1—Chief Engineer
*2—Assistant Engineers (2)
*3—Oilers

G. Self-propelled surface units (other than drillships) underway—voyage of not more than 16 hours:
1—Master (with OIM endorsement)
1—Mate (With BCO endorsement)
1—Ballast Control Operator
3—Able Seamen
1—Ordinary Seamen
1—Radio Officer (If required by the FCC)
1—Chief Engineer
*1—Assistant Engineers (2)
*2—Oilers

When engaged on a voyage of not more than 8 hours, the required crew may be reduced by 1 Able Seaman and 1 Oiler.

H. Self-propelled surface units (other than drillships) on location or under tow:
1—Master (With OIM endorsement)
1—Mate (With BCO endorsement)
1—Ballast Control Operator
1—Able Seamen
1—Ordinary Seaman
1—Radio Officer (If required by the FCC)
1—Chief Engineer (2)
*1—Assistant Engineer (2)
*2—Oilers

I. Non-self-propelled surface units (excluding bottom bearing units) on location or under tow:
1—Offshore Installation Manager
1—Barge Supervisor
2—Ballast Control Operators
2—Able Seamen
1—Ordinary Seaman

J. Non-self-propelled bottom bearing units on location or under tow:
1—Offshore Installation Manager
2—Able Seamen
1—Ordinary Seaman

The above manning scales for self-propelled MODUs underway, except under tow or on location, reflect reduced manning scales predicated on compliance with section 23.A.2 of Volume III of the Marine Safety Manual concerning installation of labor saving devices including call systems. On vessels that do not qualify for reductions of unlicensed deck department personnel, the minimum required complements should be increased by sufficient personnel to provide three unlicensed individuals for each watch.

(1) Up to two specially trained ordinary seamen may be substituted for a maximum of two of the required able seamen provided section 23.A.2 of Volume III of the Marine Safety Manual,

* Variables based on degree and acceptance of automated systems.

and Navigation and Vessel Inspection Circular 3–83 are satisfied.

(2) Individuals holding MODU engineer licenses may be substituted for the required licensed engineers.

### Regulatory Evaluation

The Coast Guard considers these regulations to be non-major under Executive Order 12291 and significant under DOT regulatory policies and procedures (44 FR 11034; 26 February 1979). Coast Guard docket, CGD 81–059, Licensing of Maritime Personnel (46 FR 38621; 16 October 1987) contains a full draft regulatory evaluation which also applies to this proposed rulemaking. It may be inspected or copied at the Marine Safety Council (G–LRA–2/36) [CGD 81–059a], Room 3600, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, from 8 a.m. to 3 p.m.

The costs associated with the rulemaking primarily concern training of personnel. For this analysis, required training costs are expressed in 1988 dollars. The regulations are not expected to have a significant economic impact. The proposed rulemaking would not require any major expenditures by the maritime industry, consumers, Federal, state or local governments. The proposal would require individuals serving in certain responsible positions on MODUs of either the self-propelled or non-self-propelled type to obtain a Coast Guard issued license or endorsement that qualifies them for the positions held. Implementation would not increase manning requirements on MODUs but rather would set a standard for training and experience for certain responsible positions. Persons holding these positions on MODUs would have to meet licensing qualifications including a particular level of experience on MODUs, completion of training courses, physical standards and professional examination. Most drilling companies already require high standards of experience and training for the people serving on their units.

The cost of the training that would be required by the proposal is summarized below. The total cost of $4,252,056 may be considered to be a one-time start-up cost with minimal additional costs in the ensuing years. Of course, anyone entering the mobile offshore oil industry thereafter would be required to meet the same requirements; however, the mobile offshore oil industry has been on a hiring plateau or decline for the past few years, and there appear to be no problems in drawing from the current pool of qualified personnel.

The following factors will significantly reduce the total cost shown in the evaluation. It is, however, impractical to quantify the exact cost savings without polling every licensee and potential license holder in the industry:

(1) Through conversations with industry representatives, it was determined the proposed amounts of experience are reasonably equivalent to the level of those persons serving in present positions of responsibility;

(2) Many assigned personnel also hold previously issued Coast Guard licenses as master MODU (486 licenses issued), mate MODU (81 licenses), chief engineer MODU (291 licenses) and assistant engineer MODU (28 licenses). By virtue of holding these licenses, they have met current Coast Guard qualification standards including experience, physical standards and professional examination. They may or may not meet the specialized sea service or training course requirements in this proposed rule. It is proposed that license holders be required to meet the service and training course requirements in order to convert their licenses to a license under the new system; and

(3) Many established drilling companies have designed and developed their own in-house training courses and facilities; therefore, these companies already train their personnel in courses similar to those required by the proposed rulemaking. While some costs must still be absorbed, such as loss of productive work, salary, travel and per diem, the actual cost of the training will be much less when provided by the parent company.

(4) The U.S. Minerals Management Services (MMS) already requires attendance at a training course for blow-out prevention and well control training for persons in certain positions on MODUs. The Coast Guard will accept evidence of completion of the required MMS course as satisfying this training requirement.

The total cost will be mitigated by company owned or sponsored training offered on-site to large groups of personnel, among many other factors. Furthermore, the costs associated with licensing and qualification of the personnel in positions of responsibility on MODUs are quite insignificant when compared to typical MODU construction costs and operating fees. Current estimates of construction range from $65–$70 million for a jack-up rig, $100–$120 million for a semi-submersible, and $55–$125 million for a drillship. Operating fees range widely from $15,000–$20,000 per day for jack-ups, $30,000–$40,000 per day for semi-submersibles, to $30,000–$40,000 per day for drillships. The training and qualifications contained in the proposal, which are strongly recommended by the National Transportation Safety Board, generally supported by the mobile offshore oil industry, and under serious consideration internationally, will certainly be justified if they contribute to the prevention of the loss of even one MODU and its crew, or even minimize the down-time of an operating unit.

### Summary of Costs

Training course costs and duration used in the computations are:

a. MODU stability—Cost estimates range from $700/student–$1,650/student; and period of course is 5 days. Average is $1,175 and 5 days.

b. Blowout prevention or well-control training—Cost estimates ranged from $600/student to $750/student; and period of course ranges from 3 to 5 days. Average is $675 and 4 days.

c. Survival suit and survival craft training—Cost estimates ranged from $225/student to $400/student; and period of course ranges from 1 day to 3 days. Average is $313 and 2 days.

d. Basic and advanced firefighting training—Cost estimates are the same as noted in the preamble to the Interim Final Rule (52 FR 38660) published 16 October 1987: cost estimates ranged between $100/student and $400/student; and period of course is 5 days. Average is $150 and 5 days.

e. First aid and CPR training—Cost estimate is $55/student; and period of course ranges from 1 day to 2 days. Average is $55 and 2 days.

Training in first aid and cardiopulmonary resuscitation (CPR) is a basic qualification requirement for all licenses and would be met by all who possess master, mate, or MODU licenses previously issued. Many companies already require first aid/CPR training for personnel. Firefighting training is already required of masters and mates. These considerations reduce the economic impact of the proposal.

Coast Guard statistics dated 1 August 1988 indicate a total of 223 active U.S. flag MODUs composed of:

Drillships—2
Self-propelled semi-submersible—1
Non-self-propelled semi-submersibles—42
Submersibles—7
Jack-ups—171

Therefore, the field of MODUs affected by this proposal is 3 self-propelled and 220 non-self-propelled units. The self-propelled units are manned by conventionally licensed personnel who already must obtain the specific types of training indicated above.

Cost estimates for required training for all licensed personnel on MODUs is determined in the following manner (standard industry practice with 6 months on and 6 months off schedule for each position=2 individuals per officer position):

(a) Drillships:

The proposed regulations only affect the training requirements for one officer and then only when the vessel is on location. When on location the master must hold a valid endorsement as OIM. Training costs associated with this class of vessel are: 2 (drillships)×1 (licensed officer)×2 (individuals per billet)×$2,163 (stability, drilling safety, and survival training)=$8,652.

(b) Self-propelled semi-submersibles:

The proposed regulations require on average that three individuals serving on board hold MODU endorsements on their licenses. Training costs associated with this class of vessel are: 1 (vessel)×3 (licensed officers)×2 (individuals per billet)×$2,163 (stability, drilling safety, and survival training)=$12,978.

(c) Non-self-propelled semi-submersibles:

The proposed regulations require that there be four MODU licensed individuals serving on board. Training costs associated with this class of vessel are: 42 (vessels)×4 (licensed officers)×2 (individuals per billet)×$2,368 (stability, drilling safety, survival training, firefighting, and first aid/CPR)=$795,648.

(d) Non-self-propelled bottom bearing:

The proposed regulations require that there be one MODU licensed individual serving onboard. Training costs associated with this class of vessel are: 178 (vessels)×1 (licensed officer)×2 (individuals per billet)×$2,368 (stability, drilling safety, survival training, firefighting, and first aid/CPR)=$843,008.

Combining the four MODU categories, the total costs for the training courses is: $8,652+$12,978+$795,648+$843,008=$1,660,286.

Estimated travel and per diem expenses should be considered, both to obtain the training and for the required visit to a regional examination center (REC). The total combined length of the training courses required by this proposal is approximately 11–18 days. It is estimated that a 1–3 day visit to an REC will be required to examine for the desired license. Application and processing may be done through the mail. A two day visit to the REC was used in the calculations. A day of travel and per diem is also included for each training course and the visit to an REC. Calculating the per diem and travel costs for each person is quite difficult. Many courses are offered by the company employer on the drilling site rather than moving the trainee to a school. An average per diem rate is approximately $85 per day. Travel is estimated to average $250 per person for each course or visit to an REC. The likely maximum per diem and travel costs are estimated as follows:

(a) Drillships: 4 (individuals)×[(3 courses+1 REC visit)×$250 (travel)+(17 days)×$85 (per diem)]]=$9,780.

(b) Self-propelled semi-submersibles: 6 (individuals)×[(4×$250+(17+$85)]=$14,670.

(c) Non-self-propelled semi-submersibles: 336 (individuals)×[(6×$250)+(26+$85)]=$1,246,560.

(d) Non-self-propelled bottom bearing: 356 (individuals)×[(6×$250)+26+$85)]=$1,320,760.

Total travel and per diem costs=$2,591,770.

Combined training, travel, and per diem costs=$4,252,056.

The agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities. These proposed rules apply to licenses for individuals only. The effect on training schools would be to formalize the requirement to attend such industry-specific training; presently, such training is often optional for the individuals serving on the MODU at the discretion of the owner/operator.

This proposed rulemaking contains information collection requirements in §§ 10.470, 10.472, 10.474, 10.542, and 10.544. With the exception of the requirement to submit a course completion certificate from a drilling safety course, the proposed rule contains no new information collection requirements. The information collection requirements were submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved. The approval numbers are listed in Title 46, Code of Federal Regulations, § 10.107. The collection requirements will only affect applicants for licenses in that they must provide a certificate as evidence of required training. The certificate will be supplied by the training facility which provides the course(s). The time required to comply with this requirement is inconsequential. Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget (OMB), 726 Jackson Place NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the U.S. Coast Guard as indicated under **"ADDRESSES."**

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rules do not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects**

*46 CFR Part 10*

Seamen, Marine safety, Navigation (water), Passenger vessels.

*46 CFR Part 15*

Seamen, Vessels.

In consideration of the foregoing the Coast Guard proposes to amend Parts 10 and 15 to Title 46, Code of Federal Regulations as set forth below:

## SUBCHAPTER B—MERCHANT MARINE OFFICERS AND SEAMEN

## PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for Part 10 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 7101, 7701, 8105; 49 CFR 1.45, 1.46. Section 10.107 also issued under the authority of 44 U.S.C. 3507.

2. The table of contents for Part 10 is amended by revising the section heading for §§ 10.470 and 10.540 and adding new §§ 10.472, 10.474, 10.476, 10.478, 10.542 and 10.544 to read as follows:

Sec.

* * * * *

**Subpart D—Professional Requirements for Deck Officers' Licenses**

* * * * *

10.470 License for offshore installation manager.

10.472 License for barge supervisor.

10.474 License for ballast control operator.

10.476 Required courses for mobile offshore drilling unit licenses.

10.478 Acknowledgements and temporary licenses for mobile offshore drilling units.

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**Subpart E—Professional Requirements for Engineer Officers' Licenses**

* * * * *

10.540 Licenses for engineers of mobile offshore drilling units.
10.542 License for chief engineer (MODU).
10.544 License for assistant engineer (MODU).

* * * * *

3. In § 10.103, the following definitions are added in alphabetical order to read as follows:

**§ 10.103 Definitions of terms used in this part.**

* * * * *

*"Ballast control operator (BCO)"* is a licensed officer restricted to service on MODUs. His duties involve the operation of the complex ballast system found on many MODUs. A ballast control operator, when assigned to a MODU, is the equivalent of a conventionally licensed mate.

*"Barge supervisor (BS)"* is a license officer restricted to service on MODUs. His duties involve support to the OIM in marine related matters including, but not limited to, maintaining watertight integrity, inspecting and maintaining mooring and towing components, and the maintenance of emergency and other marine related equipment. A barge supervisor, when assigned to a MODU is the equivalent of a conventionally licensed mate.

* * * * *

*"Employment assigned to"* is the total period a person is assigned to work on MODUs, including time spent ashore as part of normal crew rotation.

* * * * *

*"Mobile offshore drilling unit (MODU)"* means a vessel capable of engaging in drilling operations for the exploration for or exploitation of subsea resources. MODU designs include:

(a) *"Bottom bearing units"* which include:

(a) *"Self-elevating (or jackup) units"* with moveable, bottom bearing legs capable of raising the hull above the surface of the sea; and,

(2) *"Submersible units"* of ship shape, barge type or novel hull design, other than a self-elevating unit, intended for operating while bottom bearing.

(b) *"Surface units"* with a ship shape or barge type displacement hull of single or multiple hull construction intended for operating in a floating condition, including semi-submersibles and drillships.

* * * * *

*"Offshore installation manager (OIM)"* is a licensed officer restricted to service on MODUs. An assigned offshore installation manager is equivalent to a conventionally licensed master and is the person designated by the owner or operator to be in complete and ultimate command of the unit.

*"On location"* means that a mobile offshore drilling unit is bottom bearing or moored with anchors placed in the drilling configuration.

* * * * *

*"Service as"* when computing the required service for MODU licenses, is the time period, in days, a person is assigned to work on MODUs, excluding time spent ashore as part of crew rotation. A day, for the purposes of this definition, is a minimum of four hours, and no additional credit is received for periods served over eight hours.

*"Underway"* means that a mobile offshore drilling unit is not in an on location or laid up status. Underway would include that period of time when the MODU is deploying or recovering its mooring system.

* * * * *

4. Section 10.201(f)(1) is revised to read as follows:

**§ 10.201 Eligibility for licenses, general.**

* * * * *

(f) * * *

(1) A license as master of near coastal, Great Lakes and inland, inland, or river vessels of 25–200 gross tons, third mate, third assistant engineer, mate of vessels of 200–1600 gross tons, ballast control operator, assistant (MODU), assistant engineer of fishing industry vessels, second-class operator of uninspected towing vessels, radio officer, assistant engineer (limited-oceans), or designated duty engineer of vessels of not more than 4000 horsepower may be granted to an applicant who has reached the age of 19 years.

* * * * *

5. Section 10.205(f)(1) is revised to read as follows:

**§ 10.205 Requirements for original licenses and certificates of registry.**

* * * * *

(f) * * *

(1) Each applicant for an original license shall submit written recommendations concerning the applicant's suitability for duty from a master and two other licensed officers of vessels on which the applicant has served. For a license as engineer or as pilot, at least one of the recommendations must be from the chief engineer or licensed pilot, respectively, of a vessel on which the applicant has served. For a license as engineer where service was obtained on vessels not carrying a licensed engineer and for a license as operator of uninspected towing vessels, the recommendations may be by recent marine employers with at least one recommendation from a master, operator, or person in charge of a vessel upon which the applicant has served. For a license as offshore installation manager, barge supervisor, or ballast control operator, at least one recommendation must be from an offshore installation manager of a unit on which the applicant has served. Where an applicant qualifies for a license through an approved training school, one of the character references must be an official of that school. For a license for which no commercial experience may be required, such as: Master or mate 25–200 gross tons, operator of uninspected passenger vessels, radio officer or certificate of registry, the applicant may have the written recommendations of three persons who have knowledge of the applicant's suitability for duty.

* * * * *

6. Section 10.468 is added to read as follows:

**§ 10.468 Licenses for mobile offshore drilling units.**

Licenses for service on mobile offshore drilling units (MODUs) authorize service on units of any gross tons upon ocean waters while on location or while underway except when moving independently under their own power.

7. Section 10.470 is revised to read as follows:

**§ 10.470 Licenses for offshore installation manager.**

(a) Licenses as offshore installation manager (OIM) are endorsed as:

(1) OIM Unrestricted;

(2) OIM Surface Units on Location;

(3) OIM Surface Units Underway;

(4) OIM Bottom Bearing Units on Location; or

(5) OIM Bottom Bearing Units Underway.

(b) To qualify for a license or endorsement as OIM Unrestricted, an applicant must:

(1) Present evidence of the following experience:

(i) Four years of employment assigned to MODUs including at least two years service as driller, assistant driller, toolpusher, assistant toolpusher, barge supervisor, mechanical supervisor, electrician, crane operator, ballast control operator or equivalent supervisory position, with a minimum of three months of that supervisory service on surface units and three months of that supervisory service on bottom bearing units; or

(ii) An appropriate marine engineering course degree from a recognized school of technology accredited by the Accreditation Board for Engineering and Technology, together with at least two years of employment assigned to MODUs with at least one year of service as driller, assistant driller, toolpusher, assistant toolpusher, barge supervisor, mechanical supervisor, electrician, crane operator, ballast control operator, or equivalent supervisory position, with a minimum of three months of that supervisory service on surface units and three months of that supervisory service on bottom bearing units;

(2) Present evidence of training or course completion as follows:

(i) Lifeboatman certificate;

(ii) A certificate from a Coast Guard approved stability course approved for an OIM Unrestricted license or endorsement;

(iii) A certificate from a Coast Guard approved survival suit and survival craft training course;

(iv) A certificate from a U.S. Minerals Management Service (MMS) approved blowout prevention and well control training course for driller, toolpusher, or operator representative postions; and

(v) A certificate from a firefighting training course as required by § 10.205(g) of this part; and

(3) Provide a company recommendation signed by a senior company official which:

(i) Provides a description of the applicant's experience and company qualification program completed;

(ii) Certifies that the applicant has witnessed ten rig moves either as an observer in training or as a rig mover under supervision;

(iii) Certifies that the individual has successfully directed, while under the supervision of an experienced rig mover, five rig moves each on surface units and on bottom bearing units; and

(iv) Certifies that one of the rig moves required under paragraph (b)(3)(iii) of this section was completed within one year preceding date of application.

(c) An applicant for an endorsement as OIM Unrestricted who holds an unlimited license as master or chief mate must satisfy the requirements in paragraphs (b) (2) and (3) of this section and have three months service on surface units and three months service on bottom bearing units.

(d) To qualify for a license or endorsement as OIM Surface Units on Location, an applicant must:

(1) Present evidence of the following experience:

(i) Four years of employment assigned to MODUs including at least two years service as driller, assistant driller, toolpusher, assistant toolpusher, barge supervisor, mechnical supervisor, electrician, crane operator, ballast control operator or equivalent supervisory position, with a minimum of three months of that supervisory service on surface units; or

(ii) An appropriate marine engineering course degree from a recognized school of technology accredited by the Accreditation Board for Engineering and Technology, together with at least two years of employment assigned to MODUs with at least one year of service as driller, assistant driller, toolpusher, assistant toolpusher, barge supervisor, mechanical supervisor, electrician, crane operator, ballast control operator or equivalent supervisory position on MODUs, with a minimum of three months of that supervisory service on surface units; and

(2) Present evidence of training or course completion as follows:

(i) Lifeboatman certificate;

(ii) A certificate from a Coast Guard approved stability course approved for an OIM Surface Units license or endorsement;

(iii) A certificate from a Coast Guard approved survival suit and survival craft training course;

(iv) A certificate from a U.S. Minerals Management Service (MMS) approved blowout prevention and well control training course for driller, toolpusher, or operator representative positions; and

(v) A certificate from a firefighting training course as required by § 10.205(g) of this part.

(e) An applicant for an endorsement as OIM Surface Units on Location who holds an unlimited license as master chief mate must satisfy the requirements of paragraph (d)(2) of this section and have at least six months service on surface units.

(f) To qualify for a license as OIM Surface Units Underway, an applicant must:

(1) Present evidence of training or course completion as follows:

(i) Lifeboatman certificate;

(ii) A certificate from a Coast Guard approved stability course approved for an OIM Surface Units license or endorsement;

(iii) A certificate from a Coast Guard approved survival suit and survival craft training course; and

(iv) A certificate from a firefighting training course as required by § 10.205(g) of this part; and

(2) Provide a company recommendation signed by a senior company official which:

(i) Provides a description of the applicant's experience and company qualification program completed;

(ii) Certifies that the applicant has witnessed ten rig moves either as an observer in training or as a rig mover under supervision;

(iii) Certifies that the individual has successfully directed, while under the supervision of an experienced rig mover, five rig moves on surface units; and

(iv) Certifies that one of the rig moves required under paragraph (f)(2)(iii) of this section was completed within one year preceding date of application.

(g) To qualify for a license or endorsement as OIM Bottom Bearing Units on Location, an applicant must:

(1) Present evidence of the following experience:

(i) Four years of employment assigned to MODUs including at least two years service as driller, assistant driller, toolpusher, assistant toolpusher, barge supervisor, mechanical supervisor, electrician, crane operator, ballast control operator, or equivalent supervisory position, with a minimum of three months of that supervisory service on bottom bearing units; or

(ii) An appropriate marine engineering course degree from a recognized school of technology accredited by the Accreditation Board for Engineering and Technology, together with at least two years of employment assigned to MODUs with at least one year of service as driller, assistant driller, toolpusher, assistant toolpusher, barge supervisor, mechanical supervisor, electrician, crane operator, ballast control operator or equivalent supervisory position on MODUs, with a minimum of three months of that supervisory service on bottom bearing units; and

(2) Present evidence of training or course completion as follows:

(i) Lifeboatman certificate;

(ii) A certificate from a Coast Guard approved stability course approved for an OIM Bottom Bearing Units license or endorsement;

(iii) A certificate from a Coast Guard approved survival suit and survival craft training course;

(iv) A certificate from a U.S. Minerals Management Service (MMS) approved blowout prevention and well control training course for driller, toolpusher, or operator representative positions; and

(v) A certificate from a firefighting training course as required by § 10.205(g) of this Part.

(h) An applicant for an endorsement as OIM Bottom Bearing Units on Location who holds an unlimited license as master or chief mate must satisfy paragraph (g)(2) of this section and have at least six months service on bottom bearing units.

(i) To qualify for a license or endorsement as OIM Bottom Bearing Units Underway, an applicant must:

(1) Present evidence of training or course completion as follows:

(i) Lifeboatman certificate;

(ii) A certificate from a Coast Guard approved stability course approved for an OIM Bottom Bearing Units license or endorsement;

(iii) A certificate from a Coast Guard approved survival suit and survival craft training course; and

(iv) A certificate from a firefighting training course as required by § 10.205(g) of this part; and

(2) Provide a company recommendation signed by a senior company official which:

(i) Provides a description of the applicant's experience and company qualification program completed;

(ii) Certifies that the applicant has witnessed ten rig moves either as an observer in training or as a rig mover under supervision;

(iii) Certifies that the individual has successfully directed, while under the supervision of an experienced rig mover, five rig moves on bottom bearing units; and

(iv) Certifies that one of the rig moves required under paragraph (i)(2)(iii) of this section was completed within one year preceding date of application.

8. Section 10.472 is added to read as follows:

**§ 10.472 License for barge supervisor.**

(a) To qualify for a license or endorsement as barge supervisor (BS), and applicant must·

(1) Present evidence of the following experience:

(i) Three years of employment assigned to MODUs including at least one year of service as mechanic, electrician, driller, subsea specialist, or ballast control operator or equivalent supervisory position. At least three months of that service shall have been as a ballast control operator; or

(ii) An appropriate marine engineering course degree from a recognized school of technology accredited by the Accreditation Board for Engineering and Technology and one year of employment assigned to MODUs with at least six months service as mechanic, electrician, driller, subsea specialist, or ballast control operator or equivalent supervisory position. At least three months of that service shall have been as a ballast control operator; and

(2) Present evidence of training or course completion as follows:

(i) Lifeboatman certificate;

(ii) A certificate from a Coast Guard approved stability course approved for a barge supervisor license or endorsement;

(iii) A certificate from a Coast Guard approved survival suit and survival craft training course; and

(iv) A certificate from a firefighting training course as required by § 10.205(g) of this part.

(b) An applicant for an endorsement as BS who holds an unlimited license as master or mate must satisfy the requirements in paragraph (a)(2) of this section and have six months of employment assigned to MODUs including three months service as ballast control operator or trainee.

9. Section 10.474 is added to read as follows:

**§ 10.474 License for ballast control operator.**

(a) To qualify for a license or endorsement as ballast control operator (BCO), an applicant must:

(1) Present evidence of the following experience:

(i) One year of employment assigned to MODUs including at least three months employment assigned to training in the position of ballast control operator including one month service as a trainee under the supervision of a licensed ballast control operator; or

(ii) An appropriate marine, mechanical, or electrical engineering course degree from a school of technology accredited by the Accreditation Board for Engineering and Technology and three months of employment assigned to training in the position of ballast control operator including one month service as a trainee under the supervision of a licensed ballast control operator; and

(2) Present evidence of training or course completion as follows:

(i) Lifeboatman certificate;

(ii) A certificate from a Coast Guard approved stability course approved for a barge supervisor or a ballast control operator license or endorsement;

(iii) A certificate from a Coast Guard approved survival suit and survival craft training course; and

(iv) A certificate from a firefighting training course as required by § 10.205(g) of this part.

(b) An applicant for an endorsement as BCO who holds an unlimited license as master, mate, chief engineer, or assistant engineer must satisfy the requirements in paragraph (a)(2) of this section and have three months of employment assigned to MODUs including one month service as a trainee under the supervision of a licensed ballast control operator.

10. Section 10.476 is added to read as follows:

**§ 10.476 Required courses for mobile offshore drilling unit licenses.**

For license applications submitted prior to January 1, 1991, completion of survival suit and survival craft and MODU stability courses which have not been reviewed and approved by the Coast Guard may be considered as meeting MODU license requirements. In order for a course to be considered as qualifying, written certification must be made by the applicant's employer or the course offerer that the course curriculum is in substantial compliance with the Coast Guard's course approval guidelines.

11. Section 10.478 is added to read as follows:

**§ 10.478 Acknowledgements and temporary licenses for mobil offshore drilling units.**

(a) Prior to January 1, 1990, unlicensed individuals who served in positions on MODUs equivalent to OIM, BS, or BCO may make application for a Coast Guard acknowledgement of service or a temporary license which authorizes a continuation of service in that position. To be eligible, these individuals must have served in that position between August 1, 1986, and August 1, 1989, and meet the following requirements:

(1) Coast Guard acknowledgement of service.

(i) To obtain a Coast Guard acknowledgement of service, the applicant must provide a letter from a senior personnel officer of the company worked for. This letter must provide:

(A) Name of vessel(s) served on;

(B) MODU license which position is equivalent to; and

(C) Period of service.

(ii) The Coast Guard acknowledgement is valid for one year and is not renewable.

(2) Temporary license.

(i) To obtain a temporary license, the applicant must:

(A) Provide a letter from a senior personnel officer of the company worked for. This letter must provide:

(*1*) Name of vessel(s) served on;

(*2*) MODU license which position is equivalent to; and

(*3*) Period of service; and

(B) Provide evidence of 120 days service in a position equivalent to the license endorsement sought.

(ii) A temporary license is valid for five years and is not renewable.

(b) Acknowledgements or temporary licenses obtained using the provisions of this section will restrict service authority to vessels operated by the company which has certified service.

12. Section 10.540 is added to read as follows:

**§ 10.540 Licenses for engineers of mobile offshore drilling units.**

Licenses as chief engineer (MODU) or assistant engineer (MODU) authorize service on certain self-propelled or non-self-propelled units of any horsepower where authorized by the vessel's certificate of inspection.

13. Section 10.542 is added to read as follows:

**§ 10.542 License for chief engineer (MODU).**

To qualify for a license as chief engineer (MODU) an applicant must:

(a) Present evidence of the following experience:

(1) Four years of employment assigned to MODUs including two years employment as mechanic, motorman, subsea engineer, electrician, barge engineer, toolpusher, unit superintendent, crane operator or equivalent. Twleve months of that employment must have been assigned to self-propelled units; or

(2) Two years of employment assigned to MODUs as an assistant engineer (MODU). Twelve months of that employment must have been assigned to self-propelled units; and

(b) Present evidence of completion of a firefighting training course as required by § 10.205(g) of this part.

14. Section 10.544 is added to read as follows:

**§ 10.544 License for assistant engineer (MODU).**

To qualify for a license as assistant engineer (MODU) an applicant must:

(a) Present evidence of the following experience:

(1) Two years of employment assigned to MODUs including one year employment as mechanic, motorman, subsea engineer, electrician, barge engineer, toolpusher, unit superintendent, crane operator or equivalent. Six months of that employment must have been assigned to self-propelled units;

(2) Two years of employment in the machinist trade engaged in the construction or repair of diesel engines and one year of employment assigned to MODUs in the capacity of mechanic, motorman, oiler, or equivalent. Six months of that employment must have been assigned to self-propelled units; or

(3) An appropriate marine, mechanical, or electrical engineering course degree from a recognized school of technology accredited by the Accreditation Board for Engineering and Technology, and have at least six months employment in any of the capacities listed in paragraph (a)(1) of this section aboard self-propelled units; and

(b) Present evidence of completion of a firefighting training course as required by § 10.205(G) of this part.

15. Section 10.920 is added to read as follows:

**§ 10.920 Subjects for MODU licenses.**

Table 10.920–1 gives the codes used in Table 10.920–2 for MODU licenses. Table 10.920–2 indicates the examination subjects for each license by the code number.

Table 10.920–1 Codes for MODU Licenses

1. OIM/Unrestricted
2. OIM/Surface Units Underway
3. OIM/Surface Units on Location
4. OIM/Bottom Bearing Units Underway
5. OIM/Bottom Bearing Units on Location
6. Barge Supervisor
7. Ballast Control Operator

TABLE 10.920–2—SUBJECTS FOR MODU LICENSES

| Examination topics | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|---|
| Watchkeeping: | | | | | | | |
| COLREGS | X | X | X | X | | X | |
| "Basic Principles for Navigational Watch" | X | X | X | X | X | X | |
| MODU Obstruction Lights | X | | X | | X | X | |
| Meterology and Oceanography: | | | | | | | |
| Synoptic chart weather forecasting | X | X | X | X | X | X | |
| Characteristics of weather systems | X | X | X | X | X | X | X |
| Ocean current systems | X | X | X | X | X | X | |
| Tide and tidal current publications | X | X | X | X | X | X | |
| Stability, Ballasting, Construction and Damage Control: | | | | | | | |
| Principles of ship construction, structural members | X | X | X | X | X | X | X |
| Trim and stability | X | X | X | X | X | X | X |
| Damage trim & stability countermeasures | X | X | X | X | | X | X |
| Stability and trim calculations | X | X | X | X | | X | X |
| Load line requirements | X | X | X | X | X | X | X |
| Operating Manual: | | | | | | | |
| Rig characteristics & limitations | X | X | X | X | X | X | X |
| Hydrostatics data | X | X | X | X | | X | X |
| Tank tables | X | X | X | X | | X | X |
| KG limitations | X | X | X | X | | X | X |
| Severe storm instructions | X | X | X | X | X | X | X |
| Transit instructions | X | X | | X | | X | X |
| On-station instructions | X | | X | | X | X | X |
| Unexpected list or trim | X | X | X | X | | X | X |
| Ballasting procedures | X | X | X | | | X | X |
| Operation of bilge system | X | X | X | X | | X | X |
| Leg loading calculations | X | | | X | X | | |
| Completion of variable load form | X | | | X | X | X | X |
| Evaluation of variable load form | X | X | X | X | X | X | X |
| Emergency procedures | X | X | X | X | X | X | X |
| Maneuvering and Handling: | | | | | | | |
| Anchoring and anchor handling | X | X | X | | | X | |
| Heavy weather operations | X | X | X | X | X | X | X |
| Mooring, positioning | X | X | X | X | | X | |
| Moving, positioning | X | X | | X | | X | |
| Fire Prevention and Firefighting Appliances: | | | | | | | |
| Organization of fire drills | X | X | X | X | X | X | X |
| Classes and chemistry of fire | X | X | X | X | X | X | X |

TABLE 10.920-2—SUBJECTS FOR MODU LICENSES—Continued

| Examination topics | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|---|
| Firefighting systems | X | X | X | X | X | X | X |
| Firefighting equipment and regulations | X | X | X | X | X | X | X |
| Basic firefighting and prevention of fires | X | X | X | X | X | X | X |
| Emergency Procedures & Contingency Plans: | | | | | | | |
| Temporary repairs | X | X | X | X | X | X | |
| Fire or explosion | X | X | X | X | X | X | X |
| Abandon ship | X | X | X | X | X | X | X |
| Man overboard | X | X | X | X | X | X | X |
| Heavy weather | X | X | X | X | X | X | X |
| Collision | X | X | X | X | X | X | X |
| Failure of ballast control system | X | X | X | | | X | X |
| Mooring emergencies | X | | X | | | X | X |
| Blow-outs | X | | X | | X | X | |
| $H_2S$ safety | X | | X | | X | X | |
| General Engineering—Power Plants and Auxiliary Systems: | | | | | | | |
| Marine engineering terminology | X | X | X | X | X | X | X |
| Engineering equipment, ops. & failures | X | X | X | X | X | X | |
| Offshore drilling operations | | | | | | | X |
| Deck Seamanship—General: | | | | | | | |
| Transfer of personnel | X | X | X | X | X | X | |
| Support boats/helicopters | X | X | X | X | X | X | |
| Cargo stowage & securing | X | X | X | X | X | X | |
| Hazardous materials/dangerous goods precautions | X | X | X | X | X | X | |
| Mooring equipment | X | X | X | X | X | X | |
| Crane use procedures & inspections | X | X | X | X | X | X | |
| Medical Care: | | | | | | | |
| Knowledge and use of: | | | | | | | |
| First aid | X | X | X | X | X | X | X |
| First response medical action | X | X | X | X | X | X | X |
| Maritime Law & Regulation: | | | | | | | |
| National maritime law: | | | | | | | |
| Certification & documentation of vessels | X | X | X | X | X | | |
| Ship sanitation | X | X | X | X | X | | |
| Regulations for vessel inspection | X | X | X | X | X | | |
| Pollution prevention regulations | X | X | X | X | X | X | X |
| Licensing and certification regulations | X | X | X | X | X | | |
| Rules and regulations for MODUs | X | X | X | X | X | X | |
| International maritime law: | | | | | | | |
| International Maritime Organization | X | X | X | X | X | | |
| International Convention on Load Lines | X | X | X | X | | | |
| MARPOL 73/78 | X | X | X | X | X | | |
| Personnel Management and Training: | | | | | | | |
| Ship's business including: | | | | | | | |
| Required logs and record keeping | X | X | X | X | X | X | |
| Casualty reports and records | X | X | X | X | X | | |
| Communications: | | | | | | | |
| Radio communications and FCC permit: | X | X | X | X | X | X | |
| Radiotelephone procedures | X | X | X | X | X | X | |
| Lifesaving/Survival: | | | | | | | |
| Lifesaving appliance operation (launching, boat handling) | X | X | X | X | X | X | X |
| Procedures/rules for lifeboats, survival suits, PFDs, liferafts & emergency signals. | X | X | X | X | X | X | X |
| Emergency radio transmissions | X | X | X | X | X | X | X |
| Survival at sea | X | X | X | X | X | X | X |

16. Section 10.950 is revised to read as follows:

**§ 10.950 Subject for engineer licenses.**

TABLE 10.950.—SUBJECTS FOR ENGINEER LICENSES

| | Unlimited chief engineer | | Unlimited 1st asst. engineer | | Unlimited 2nd asst. engineer | | Unlimited 3rd asst. engineer | | Chief engineer limited | | A/E Ltd & DDE unlim. | | Unin. ind. C/E | Fish. vsl. A/E | DDE Ltd HP | | MODU | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | STM | MTR | STM | MTR | STM | MTR | STM | MTR | STM | MTR | STM | MTR | MTR | MTR | STM | MTR | C/E | A/E |
| General Subjects: | | | | | | | | | | | | | | | | | | |
| Prints and Tables | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T |
| Pipes, Fittings, Valves | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P-T | P |
| Hydraulics | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P-T | P-T |
| Bilge Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P-T | P |

TABLE 10.950.—SUBJECTS FOR ENGINEER LICENSES—Continued

| | Unlimited chief engineer | | Unlimited 1st asst. engineer | | Unlimited 2nd asst. engineer | | Unlimited 3rd asst. engineer | | Chief engineer limited | | A/E Ltd & DDE unlim. | | Unin. ind. C/E | Fish. vsl. A/E | DDE Ltd HP | | MODU | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | STM | MTR | STM | MTR | STM | MTR | STM | MTR | STM | MTR | STM | MTR | MTR | MTR | STM | MTR | C/E | A/E |
| Sanitary/Sewerage Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P |
| Freshwater Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P-T | P | P | P | P-T | P-T |
| Lubricants | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P |
| Lubrication Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P |
| Automation Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P-T | P |
| Control Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P-T | P-T |
| Propellers/Shafting Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | | |
| Machine Shop | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P | P |
| Distilling Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P | P |
| Pumps | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P |
| Compressors | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P |
| Administration | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P | P | P | P | P | P | P-T | P |
| Governors | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P | P | P | P | P-T | P-T |
| Cooling Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P |
| Bearings | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P |
| Instruments | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P |
| Ship Construction and Repair | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P |
| Theory | T | T | T | T | T | T | T | T | T | T | T | T | T | T | T | T | T | T |
| Steering Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | | |
| Deck Machinery | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P | P |
| Ventilation Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P | P | P | P | P | P |
| Thermodynamics | T | T | T | T | T | T | T | T | | | | | | | | | | |
| Watch Duties | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P-T | P-T |
| Refrigeration and Air Conditioning: | | | | | | | | | | | | | | | | | | |
| Theory | T | T | T | T | T | T | T | T | T | T | T | T | T | T | T | T | T | T |
| Air Conditioning Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P | P |
| Refrigeration Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P | P |
| Control Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P | P |
| Safety | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P |
| Casualty Control | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P |
| Electricity: | | | | | | | | | | | | | | | | | | |
| Theory | T | T | T | T | T | T | T | T | T | T | T | T | T | T | T | T | T | T |
| General Maintenance | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| Generators | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| Motors | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| Motor Controllers | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| Propulsion Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T | P | P | P | P |
| Distribution Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P |
| Electronic Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P | P | P | P-T | P-T |
| Batteries | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P |
| Communications | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P-T | P | P | P | P |
| Safety | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| Casualty Control | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| Steam Generators: | | | | | | | | | | | | | | | | | | |
| Steam | P-T | P | P-T | P | P-T | P | P-T | P | P-T | | P-T | | P | P | P | | P-T | |
| Main Boilers | P-T | | P-T | | P-T | | P-T | | P-T | | P-T | | | | P-T | | | |
| Auxiliary Boilers | | P-T | | P-T | | P-T | | P-T | | P-T | | P-T | P | P | | P | P-T | P-T |
| Feedwater Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | | P-T | | P | P | P-T | | P-T | P |
| Condensate Systems | P-T | P-T | P-T | P | P-T | P | P-T | P | P-T | | P-T | | | | P-T | | P-T | P |
| Recovery Systems | P-T | P-T | P-T | P | P-T | P | P-T | P | P-T | | P-T | | P | P | P-T | | P-T | P |
| Fuel | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P-T | P-T |
| Fuel Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P-T | P-T |
| Boiler Water | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P-T | P | P | P | P-T | | P-T | P |
| Control Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | | P | P | P-T | | P-T | |
| Automation Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | | P | P | P-T | | P-T | |
| Safety | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P-T | P | P-T | P |
| Casualty Control | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P | P-T | P | P-T | P |
| Steam Engines: | | | | | | | | | | | | | | | | | | |
| Main Trubine | P-T | | P-T | | P-T | | P-T | | P-T | | P-T | | | | P-T | | | |
| Auxiliary Turbine | P-T | P | P-T | P | P-T | P | P-T | P | P-T | | P-T | | | | P-T | | | |
| Reciprocating Machines | P-T | | P-T | | P-T | | P-T | | P-T | | P-T | | | | P-T | | | |
| Governor Systems | P-T | P | P-T | P | P-T | P | P-T | P | P-T | | P-T | | | | P-T | | | |
| Control Systems | P-T | P | P-T | P | P-T | P | P-T | P | P-T | | P-T | | | | P-T | | | |
| Automation Systems | P-T | | P-T | | P-T | | P-T | | P-T | | P-T | | | | P-T | | | |
| Lubrication Systems | P-T | P | P-T | P | P-T | P | P-T | P | P-T | | P-T | | | | P-T | | | |
| Drive Systems | P-T | | P-T | | P-T | | P-T | | P-T | | P-T | | | | P-T | | | |
| Safety | P-T | P | P-T | P | P-T | P | P-T | P | P-T | | P-T | | | | P-T | | | |
| Casualty Control | P-T | P | P-T | P | P-T | P | P-T | P | P-T | | P-T | | | | P-T | | | |

TABLE 10.950.—SUBJECTS FOR ENGINEER LICENSES—Continued

| | Unlimited chief engineer | | Unlimited 1st asst. engineer | | Unlimited 2nd asst. engineer | | Unlimited 3rd asst. engineer | | Chief engineer limited | | A/E Ltd & DDE unlim. | | Unlim. ind. C/E | Fish. vsl. A/E | DDE Ltd HP | | MODU | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | STM | MTR | STM | MTR | STM | MTR | STM | MTR | STM | MTR | STM | MTR | MTR | MTR | STM | MTR | C/E | A/E |
| Motor: | | | | | | | | | | | | | | | | | | |
| Main Engines | | P-T | | P-T | | P-T | | P-T | | P-T | | P-T | P-T | P-T | | P-T | | |
| Auxiliary Engines | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P-T | P-T | P |
| Starting Systems | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P-T | P-T | | P-T | P-T | P |
| Lubrication Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P |
| Fuel | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P |
| Fuel Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P |
| Combustion Systems | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P-T | P | P-T | P-T | P-T | | P-T | P | P |
| Intake Systems | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P-T | P-T | | P-T | P | P |
| Exhaust Systems | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P-T | P-T | | P-T | P | P |
| Cooling Systems | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P-T | P-T | | P-T | P | P |
| Supercharging Systems | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P-T | P-T | | P-T | | |
| Drive Systems | P | P-T | P | P-T | P | P-T | P | P-T | | P-T | | P-T | P-T | P-T | | P-T | P | P |
| Control Systems | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P-T | P-T | | P-T | P | P-T |
| Automation Systems | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P-T | P-T | | P-T | P-T | P-T |
| Governors | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P-T | P-T | | P-T | P | P |
| Turbines | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P | P-T | P-T | P-T | | P-T | P | P |
| Safety | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T |
| Casualty Control | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T |
| Safety: | | | | | | | | | | | | | | | | | | |
| Fire | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T |
| Fire Prevention | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T |
| Fire Fighting | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T |
| Flooding | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| Dewatering | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| Stability and Trim | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| Damage Control | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| Emergency Equipment and Lifesaving Applicances. | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| General Safety | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| First Aid | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| Dangerous Materials | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| Pollution | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| Inspections and Surveys | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| U.S. Rules and Regulations | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |
| International Rules and Regulations. | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P-T | P | P | P-T | P-T |

P=Practical knowledge.
T=Theoretical knowledge.

## PART 15—MANNING REQUIREMENTS

17. The authority citation for Part 15 continues to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8105; 49 CFR 1.45, 1.46.

18. Section 15.301 is amended by adding paragraphs (b)(8), (b)(9), and (b)(10) to read as follows:

**§ 15.301 Definitions of terms used in this Part.**

* * * * *

(b) * * *

(8) Offshore installation manager (OIM);

(9) Barge supervisor (BS);

(10) Ballast control operator (BCO).

* * * * *

19. Section 15.520 is revised to read as follows:

**§ 15.520 Mobile offshore drilling units.**

(a) The requirements in this section for mobile offshore drilling units (MODUs) supplement other requirements in this Part.

(b) The OCMI determines the minimum number of licensed individuals and crew (including lifeboatmen) required for the safe operation of inspected MODUs. In addition to other factors listed in this Part, the specialized nature of the MODU is considered in determining the specific manning levels.

(c) A license as offshore installation manager (OIM), barge supervisor (BS), or ballast control operator (BCO) authorizes service only on MODUs. A license or endorsement as OIM is restricted to the MODU type and mode of operation specified on the license.

(d) A self-propelled MODU other than a drillship must be under the command of an individual who holds a license as master endorsed as OIM.

(e) A drillship must be under the command of an individual who holds a license as master. When a drillship is on location, the individual in command must hold a license as master endorsed as OIM.

(f) A non-self-propelled MODU must be under the command of an individual who holds a license or endorsement as OIM.

(g) An individual serving as mate on a self-propelled surface unit other than a drillship must hold an appropriate license as mate and an endorsement as BS or BCO. An individual holding a license or endorsement as barge supervisor or ballast control operator may be substituted for a required mate when a self-propelled surface unit other than a drillship is on location or under tow, under certain circumstances as determined by the cognizant OCMI.

(h) An individual holding a license or endorsement as barge supervisor is required on a non-self-propelled surface unit other than a drillship.

(i) An individual holding a license or endorsement as barge supervisor may serve as ballast control operator.

(j) The OCMI issuing the MODU's certificate of inspection may authorize the substitution of chief or assistant engineer (MODU) for chief or assistant engineer, respectively, on self-propelled surface units.

(k) Requirements in this Part concerning radar observers do not apply to non-self-propelled MODUs.

(l) A mobile offshore drilling unit underway or on location, when afloat and equipped with a ballast control room, must have the ballast control room manned by an individual holding a license or endorsement authorizing service as ballast control operator.

20. Section 15.810 is amended by redesignating existing paragraphs (b)(2) through (b)(4) as (b)(3) through (b)(5), respectively; by revising paragraph (b)(1); and by adding a new paragraph (b)(2) to read as follows:

**§ 15.810 Mates.**

* * * * *

(b) * * *

(1) Vessels of 1000 gross tons or more (except MODUs)—three licensed mates (except when on a voyage of less than 400 miles from port of departure to port of final destination—two licensed mates).

(2) MODUs of 1000 gross tons or more:

(i) Three licensed mates when on a voyage of more than 72 hours.

(ii) Two licensed mates when on a voyage of more than 16 but not more than 72 hours.

(iii) One licensed mate when on a voyage of not more than 16 hours.

* * * * *

Dated: February 22, 1989.

**J.D. Sipes,**

*Real Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 89-11647 Filed 5-16-89; 8:45 am]

BILLING CODE 4910-14-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 89-104; RM-6645]**

### Radio Broadcasting Services; Big Pine, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed on behalf of Janice D. Levin, seeking the allotment of FM Channel 227B to Big Pine, California, as that community's first local broacast service. Reference coordinates for this proposal are 37-09-54 and 118-17-12.

**DATES:** Comments must be filed on or before June 29, 1989, and reply comments on or before July 14, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Tom W. Davidson, Esq., Sidley & Austin, 1722 Eye St., NW, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-104, adopted April 24, 1989, and released May 8, 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 Steet, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the Public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Karl A. Kensinger,**

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

[FR Doc. 89-11750 Filed 5-16-89; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 89-100, RM-6647]**

### Radio Broadcasting Services; Sargent, NE

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by E. Eugene McCoy, Jr. proposing the allotment of Channel 221C1 to Sargent, Nebraska, as its first local FM service. Channel 221C1 can be alloted to Sargent in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Sargent are North Latitude 41-38-30 and West Longitude 99-22-18. Petitioner is requested to furnish community data since Sargent is not listed in the 1980 U.S. Census.

**DATES:** Comments must be filed on or before June 26, 1989, and reply comments on or before July 11, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: E. Eugene McCoy, Jr., 1211 10th Avenue, Central City, Nebraska 68826 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synoposis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-100, adopted April 24, 1989, and released May 4, 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 Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-11753 Filed 5-16-89; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

**[MM Docket No. 89-101, RM-6654]**

## Radio Broadcasting Services; Chateaugay, NY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Four Seasons Communications, Inc. seeking the allotment of Channel 234A to Chateaugay, New York, as the community's first local FM service. Channel 234A can be allotted to Chateaugay in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.0 kilometers (0.6 miles) south to avoid prohibited interference to stations or allotments at Montreal, Vianney, Trois Riveres and Hull, Quebec, Canada. Canadian concurrence is required.

**DATE:** Comments must be filed on or before June 26, 1989, and reply comments on or before July 11, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filling comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy D. Martz, President, Four Seasons Communications, Inc., 273 Whiting Pond Road, P.O. Box 36, Fairfield, Connecticut 06430 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-101, adopted April 24, 1989, and released May 4, 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 Service, (202) 857-3899, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-11754 Filed 5-16-89; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

**[MM Docket No. 89-105, RM-6643]**

## Television Broadcasting Services; Coos Bay, OR

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by California Oregon Broadcasting, Inc. proposing the allotment of Channel 41 to Coos Bay, Oregon, as the community's second local television service. Channel 41 can be allotted to Coos Bay in compliance with the Commission's minimum distance separation requirements and the recent freeze *Order* on the allotment of new channels to communities within the minimum co-channel separation distance to certain markets with a site restriction of at least 12.2 kilometers (7.6 miles) south. The coordinates for this allotment are North Latitude 43-16-00 and West Longitude 124-16-35.

**DATES:** Comments must be filed on or before June 29, 1989, and reply comments on or before July 14, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marnie K. Sarver, Esq., Pierson, Ball & Dowd, 1220 18th Street NW., Washington, DC 20036 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-105, adopted April 27, 1989, and released May 8, 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 Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is not longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89-11749 Filed 5-16-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-102, RM-6636]

## Radio Broadcast Services; Burnham, PA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by DB Communications proposing the allotment of Channel 262A to Burnham, Pennsylvania, as the community's first local FM service. Channel 262A can be allotted to Burnham in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.9 kilometers (2.4 miles) southwest to avoid a short-spacing to Station WLIZ, Channel 263A, Elizabeth Pennsylvania. The coordinates for this allotments are North Latitude 40-36-08 and West Longitude 77-35-43. Canadian concurrence is required.

**DATES:** Comments must be filed on or before June 26, 1989, and reply comments on or before July 11, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James M. Weitzman, Esq., Kaye, Scholer, Fierman, Hays & Handler, The McPherson Building, 901-15th Street NW., Suite 1100, Washington, DC. 20005 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-102, adopted April 24, 1989, and released May 4, 1989. The full context of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see page 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**Karl A. Kensinger,**

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

[FR Doc. 89-11752 Filed 5-16-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-107, RM-6617]

## Radio Broadcasting Services; Coalmont, TN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Cumberland Communication Corporation proposing the allocation of Channel 284A to Coalmont, Tennessee, as that community's first local FM service. A site restriction of 6.0 kilometers (3.7 miles) west of the city is required. The coordinates are 35-20-22 and 85-46-10.

**DATES:** Comments must be filed on or before June 29, 1989, and reply comments on or before July 14, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Ashton R. Hardy, Esquire, Bradford D. Carey, Esquire, Marjorie R. Esman, Esquire, Walker, Bordelon, Hamlin, Theriot and Hardy, 701 South Peters Street, New Orleans, LA 70130 (Counsels for petitioner).

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-107, adopted April 27, 1989, and released May 8, 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**Karl A. Kensinger,**

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

[FR Doc. 89-11751 Filed 5-16-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-106, RM-6568]

## Radio Broadcasting Services; Weston, WV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Stonewall Broadcasting Corporation, proposing the substitution of Channel 272B1 for Channel 272A at Weston, West Virginia, and modification of the license for Station KSSN(FM) to specify operation on the higher powered channel. A site restriction of 12.3 kilometers (7.6 miles) east of the community is required at coordinates 39-00-00 and 80-20-00.

**DATES:** Comments must be filed on or before June 29, 1989, and reply comments on or before July 14, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: W.T. Weber, Jr., Attorney at Law, 208 Main Avenue, Weston, West Virginia 26452 (Counsel

for petitioner); and Stonewall Broadcasting Corporation, 300 Harrison Avenue, P.O. Box 980, Weston, West Virginia (Petitioner).

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–106, adopted April 27, 1989, and released May 8, 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 contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Karl A. Kensinger,**

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

[FR Doc. 89–11748 Filed 5–16–89; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

### Federal Motor Vehicle Safety Standards; Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This notice denies a petition for rulemaking submitted by the Redco Co., requesting that the agency amend Standard No. 120 to require that safety literature and warning labels concerning the servicing of tires and rims be placed in and on motor vehicles other than passenger cars and motorcycles. Redco believed that this amendment would reduce the number of injuries that occur during the servicing of tires and rims for these vehicles. NHTSA concludes that the requested actions would not be effective in significantly reducing injuries. Further, some of the requested actions, which would regulate motor vehicles and motor vehicle equipment already in use, are outside the agency's statutory authority. Therefore, the Redco petition is denied.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Soodoo, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington DC 20590. Telephone: (202) 366–5892.

**SUPPLEMENTARY INFORMATION:** Federal Motor Vehicle Safety Standard No. 120, *Tire selection and rims for motor vehicles other than passenger cars*, specifies tire and rim selection requirements and rim marking requirements for motor vehicles other than passenger cars. The purpose of this standard is to provide safe operational performance of these vehicles by ensuring that the vehicles are equipped with tires of adequate size and load rating and with rims of appropriate size and type designation. The standard specifies requirements for tire and rim selection, rim marking, and label information for multi-piece and single piece tire rims.

**I. Multi-Piece and Single Piece Wheel Rims**

Generally speaking, a multi-piece rim consists of two or more components which, when they are assembled and the tire is inflated, are held together by the force of the air pressure in the tire. A multi-piece rim includes a rim base, which is the largest part of the metal structure supporting the tire, and one or more detachable side rings serving as a flange to keep the inflated tire on the rim base. The rim base, side ring, lock rings, and tire are collectively referred to as a "wheel". The rim base and the side or locking rings are the primary components which support the tire's bead. This structure is referred to as a split side ring in two piece assemblies and a solid side ring and split lock ring in three piece assemblies. A multi-piece rim is used in conjunction with tube type tires, most frequently on trucks, tractors, buses, trailers, campers and off-highway type vehicles. (See 29 CFR 1910.177(b); and Society of Automotive Engineers, SAE J393, which defines rim terminology).

There are basically four types of multi-piece wheel designs. In the first design (exemplified by Goodyear's KW type rim), the rim base is split radially and the side ring is circumferentially continuous. In the second design (exemplified by Firestone's, Kelsey-Hayes's, and Budd's RH5° and KL rims), both the rim base and the side ring are circumferentially continuous. The third type of rim (exemplified by Goodyear's "LW" type rim) is a two piece assembly composed of a demountable rim base and a split side ring. The fourth design in the larger sizes (exemplified by Firestone's "Commander 5") is a three piece assembly composed of a rim base, a side and a lock ring.

Multi-piece rim failures occur during or after inflation of the tire when the side or lock ring is not properly engaged on the rim base. When this occurs, the lock ring can be hurled off the rim base at speeds in excess of 100 miles per hour. This poses a risk of serious harm to anyone in its path.

A single piece rim wheel is defined as "the assemblage of single piece rim wheel with the tire and other components." 29 CFR 1910.177(b). Single piece rims are used in conjunction with tubeless tires on passenger cars and light trucks, and some medium and heavy duty trucks. With single piece rims, the tire bead must be forced over the top of the rim flange to mount the tire. A single piece rim is designed with one side of the rim narrower than the other side to facilitate the installation of the tire on the wheel.

NHTSA is aware of reported injuries and fatalities that have been associated with the explosive separation of wheel assemblies on large vehicles. In a notice issued at 44 FR 12072, March 5, 1979, the agency reported that it had records of 439 explosive separations between 1957 and 1979, of which 71 such accidents resulted in deaths, and 234 accidents which resulted in serious injuries, including the loss of one or both eyes, head damage and face disfigurement. During this period, rim separations reportedly occurred on vehicles being driven or parked on the road in at least 96 cases and during tire repair and maintenance operations in at least 197 cases. The other cases were not positively identified as being on the road or in repair or maintenance situations because of insufficient information.

Since the promulgation by the Occupational Safety and Health Administration (OSHA) of its multi-piece rim wheel servicing regulation in

1980 (which is discussed further below), NHTSA's Office of Defect Investigation (ODI) has compiled a list of 451 reported accidents involving explosive separation of wheels between 1980 and 1985. Approximately 70 percent or more of these accidents were shop accidents which involved repair, maintenance, or other handling of the wheels. The data were unclear as to where the other 30 percent of the accidents occurred. Most of the rims in these accidents were 12 to 18 years old, while the associated vehicle was on average 10 to 15 years old. At least 154, or 34 percent, of the reported accidents involved either the RH5° or K-Type rims, which are no longer produced. Since 1985, only seven wheel explosions have been reported to NHTSA. Five of these reported explosions involved the RH5= or K-Type rim. Further, 90 percent of all the reported accidents involve wheel assemblies over ten years old.

## II. OSHA and NHTSA Regulatory Action Concerning Tire Rims

OSHA and NHTSA have adopted and/or considered methods to make the servicing of tire rims safer. On January 29, 1980, OSHA promulgated a safety regulation (29 CFR 1910.177) related to the servicing of multi-piece rim wheels on trucks and other large motor vehicles. (45 FR 6705). On February 3, 1984, that agency amended the regulation to include requirements for the safe servicing of single piece rim wheels. (49 FR 4338). Title 29 CFR 1910.177 applies to the servicing of single piece and multi-piece rims on large motor vehicles such as trucks, tractors, trailers, buses, and off-road machines. The OSHA regulation requires an employer to (1) specify procedures related to the training of employees who service rim wheels, (2) provide a rim wheel restraining device or other barrier to be used during the inflation of tires, (3) ensure that wheel components are not interchanged except as provided in a NHTSA approved chart or safety manual, and (4) make certain that the employees follow safe operating procedures for the servicing of the wheel assemblies.

Title 29 CFR 1910.177 does not apply to the servicing of rim wheels used on automobiles, pickup trucks and vans that utilize automobile tires or tires designated "LT." Further, the OSHA regulation does not apply to businesses that have no employees other than the owners or to the construction, agricultural, and maritime industries. However, OSHA does regulate these employers and places of employment under the Construction Safety Standards, 29 CFR Part 1926; the Agriculture Standards, 29 CFR Part 1928; and the Maritime Standards, 29 CFR Parts 1915 through 1918.

NHTSA also considered whether Standard No. 120 should be amended to require multi-piece rims to meet certain performance requirements to reduce the number of explosive separations of these types of rims, in an advance notice of proposed rulemaking (ANPRM) at 44 FR 12072, March 5, 1979. NHTSA terminated this rulemaking action on February 25, 1982, 47 FR 8232. For several reasons, the agency determined that the number of explosive separations would be reduced without conducting rulemaking. Among those reasons were, first, that OSHA's regulation already specified certain safety precautions in the servicing of wheel assemblies. Second, most explosive separations have involved the Goodyear K-Type of rim or the Firestone RH5°; the K-Type has not been produced since 1968 and the RH5° has not been produced since 1973. Thus, as these two types of rims approach the end of their useful lives, they will be replaced with newer designs which should be less prone to explosive separation. (47 FR 8232–8233).

NHTSA notes that, in cooperation with the agency, rim manufacturers are increasing their voluntary efforts to distribute rim servicing safety information. On September 23, 1987, January 27, 1988, and March 30, 1989, NHTSA's Office of Defects Investigation held meetings with rim manufacturers to encourage the manufacturers to voluntarily increase their efforts in this area. NHTSA has developed and is finalizing an informational brochure which includes the input from various rim manufacturers and OSHA. As a result, NHTSA and the manufacturers will be distributing this pamphlet concerning safety precautions related to rim servicing. This information will be distributed to individuals who service truck rims and wheels, especially those not covered by the OSHA regulation at 29 CFR 1910.177. The agency and the rim manufacturers also are considering the design and distribution of additional rim servicing and safety information in other forms.

## III. Redco Petition

On October 30, 1987, Redco Corp., a manufacturer of multi-piece and single piece rims and wheels, submitted a petition for rulemaking requesting an amendment to Standard No. 120.[1] The petitioner sought to supplement the OSHA safety regulations by asking NHTSA to mandate that additional literature concerning the servicing of tires and rims be placed in and on the vehicles that are subject to Standard No. 120 (except for motorcycles). The petitioner asserted that a segment of the tire and wheel servicing industry is left unregulated because the OSHA safety regulation does not apply to either businesses that do not have employees other than the owners or to the construction, agriculture and maritime industries. It contended that this segment of the industry does not always voluntarily seek out or request this safety information, even though it is available upon request from OSHA or the rim manufacturers. Although Redco conceded that on the job training is the most effective way to insure safety when servicing tires and wheels, it contended that the distribution of admonitory and instructional literature would further the interests of motor vehicle safety related to the servicing of tires and rims.

The petitioner asked NHTSA to take the following four actions to reduce the number of injuries related to the servicing of tire and wheel assemblies. First, Redco asked the agency to mandate that any truck, bus, or multipurpose passenger vehicle that has a cab be required to maintain a fold-up OSHA chart in its door pocket or glove compartment. Second, the petitioner asked the agency to require that a warning label be placed in the cab and near the trailer wheels. This label was to warn that a person should not service the wheel assembly unless he or she has read the OSHA charts and obtained training. Third, Redco asked NHTSA to join with OSHA to distribute warning cards to the Department of Transportation for each state. The two Federal agencies then would request that the state DOTs distribute these cards at weigh-in stations, during vehicle registration, and during truck driver testing. Fourth, the petitioner asked that NHTSA mail to each registered owner of a motor vehicle to which Standard No. 120 applied (except motorcycles) the safety charts, warning labels, and cards. The vehicle owners would be asked to place this literature and the labels in or on the vehicles.

After extensive review, NHTSA has decided to deny Redco's petition for the reasons set forth below. This denial notice explains the problems that would be associated with the implementation of the petitioner's suggestions, and why NHTSA has concluded that implementation of these suggestions

[1] Petition not published in the Federal Register.

would not significantly reduce the problem of explosive separations during servicing. However, this denial should not be interpreted as a determination that explosive separations during the servicing of multi-piece and single piece wheels do not need to be, or cannot be, reduced. Instead, NHTSA believes that means such as the distribution of the rim servicing pamphlet should make the servicing of these tire rims safer. Moreover, the agency encourages the rim manufacturers, both domestic and foreign, to continue their efforts to distribute safety information to the servicers.

At the outset, NHTSA notes that it has the statutory authority to require charts and warning labels to be placed into, attached onto, or to otherwise accompany a new motor vehicle or item of motor vehicle equipment at or before the time of first purchase. 15 USC 1392, 1401(d). However, the agency does not have the authority to require that this material be maintained with a vehicle, be sent to a vehicle owner (absent a finding of a safety related defect or noncompliance with a safety standard), or be distributed by a state agency. In addition, OSHA (instead of NHTSA) has the authority to regulate the servicing of wheel rims under section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655).

The most important practical shortcoming of Redco's suggestions is that placing the servicing information in the cab or disseminating the information to the drivers and/or owners of the vehicles fails to target the safety information to the group most at risk: the servicers of the wheel rims. For instance, the ODI data on multi-piece rim accidents between 1980 and 1985 revealed that at least 40 percent of the reported accidents occurred while the wheel was neither on nor near the vehicle. This data also revealed that a majority of the accident victims were not tire servicers, and the agency was not able to identify any accident where a driver or an owner was servicing or had serviced a wheel involved in an explosive separation. Because it is unlikely that the drivers or owners of the vehicles will service the wheel assemblies, the suggestions in this petition to distribute safety information to the owners and drivers of vehicles would not reach the personnel who are at risk (i.e. those who actually service the rims.)

Accordingly, NHTSA concludes that Redco's first proposal to include the OSHA chart in the vehicle cab and its second proposal to attach a warning label in the cab would likely be ineffective. These two suggestions do little or nothing to provide safety information to the population most at risk, the servicers of wheel rims, who generally do not need to enter the cabs while servicing the rims.

Part of Redco's second suggestion called for the placement of warning labels on the trailer frame near the wheels. NHTSA notes that it only has the statutory authority to require the placement of such labels on new vehicles. Even if the warning labels were placed on a new trailer, the wheel assemblies frequently are serviced away from the trailer. Further, those vehicles currently in production are equipped with newer-design wheels that are less likely than earlier designs to have explosive separations during servicing. As noted above, 90 percent of reported accidents from explosive separations involve old design wheel assemblies that are over ten years old. The petitioner's suggestions would have little effect in remedying the problem of explosive wheel separations involving older rims.

NHTSA also declines to propose Redco's third suggestion to have the Department of Transportation for each state distribute wheel service information at weigh in stations, during vehicle registration, and during truck driver tests. Under the principles of Federalism, the individual states make their own decisions about whether to distribute vehicle performance information. Thus, NHTSA cannot require state entities to distribute performance information for motor vehicles. Moreover, as with Redco's other suggestions, this one targets the vehicle owner and driver rather than the wheel servicer, who is most at risk.

NHTSA also was not persuaded by Redco's fourth suggestion, which asked the agency to send labels and cards containing tire rim service information to each individual who owns a vehicle (other than a motorcycle) with tires or rims subject to Standard No. 120. In the requested mailing, the agency would have urged voluntary compliance with the OSHA tire rim servicing standard. Such a measure again targets the vehicle owners rather than the wheel servicers. The large costs associated with this suggestion also are not the best use of NHTSA's limited resources, because the agency would have to identify the large number of vehicle owners subject to Standard No. 120 and mail the safety information to them.

Under a subpart of its fourth suggestion, Redco further requested NHTSA to mandate that all new vehicles contain the charts and warning labels. As noted above, such a measure would be ineffective because it targets the vehicle owners and drivers rather than the rim servicers. In addition, it would focus on new vehicles, while most of the reported problems have been with older vehicles and older rims.

NHTSA concludes that there is not a reasonable possibility that the order requested by Redco would be issued at the conclusion of a rulemaking proceeding. The petitioner has not shown that the agency should amend Standard No. 120 to require that the agency distribute servicing information and warning labels to the owners and drivers of motor vehicles that are subject to Standard No. 120. Further, the other requested actions would not be likely to significantly reduce the number of explosive separations during tire and rim servicing. Accordingly, the Redco petition is denied.

(15 U.S.C. 1392, 1401, 1407, 1410a, 1421, 1423, delegation of authority at 49 CFR 1.50)

Issued on May 10, 1989.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 89-11777 Filed 5-16-89; 8:45 am]

BILLING CODE 4910-59-M

# Notices

Federal Register
Vol. 54, No. 94
Wednesday, May 17, 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

### Office of the Secretary

### Proposed Establishment of Advisory Committee on Universal Cotton Standards

**AGENCY:** Office of the Secretary, U.S. Department of Agriculture (USDA).

**ACTION:** Proposal to establish an Advisory Committee of Universal Cotton Standards.

**SUMMARY:** The USDA is proposing to establish an advisory committee to review official Universal Grade Standards for American Upland cotton prepared by USDA and make recommendations regarding changes in the Standards.

**DATE:** Comments must be received by June 1, 1989.

**ADDRESS:** Send written comments to: Jesse F. Moore, Director, Cotton Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456.

**FOR FURTHER INFORMATION CONTACT:** Jesse F. Moore, (202) 447-3192.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the Secretary of Agriculture intends to establish an Advisory Committee on Universal Cotton Standards composed of foreign and domestic representatives of the cotton industry. The purpose of the committee is to review official Universal Grade Standards for U.S. Upland cotton prepared by USDA and make recommendations regarding changes.

The Secretary has determined that the work of the committee is in the public interest and is in connection with the duties of the USDA. No other advisory committee in existence is capable of advising and assisting the Department on the task assigned, nor does the Department have an alternative means to obtain the technical and practical expertise needed from private industry.

Balanced committee membership will be attained domestically and internationally through the following committee composition:

**Representation by Domestic Industry**

The U.S. cotton industry's committee membership will be comprised of 12 producers and ginners, 6 representatives of merchandising firms and 6 representatives of textile manufacturers. Each member will have one vote. Accordingly, voting privileges will be divided as follows:

(1) U.S. cotton producers and ginners—12 votes;
(2) U.S. merchandising firms—6 votes;
(3) U.S. textile manufactures—6 votes.

**Representation by Foreign Signatory Associations**

There will be 2 committee members from each of the foreign signatory associations. Members will segregate into groups representing foreign signatory merchant associations and foreign signatory spinner associations with voting privileges divided as follows:

(1) Foreign signatory merchant associations—6 votes;
(2) Foreign signatory spinner associations—6 votes.

Federal policy with respect to equal opportunity will be followed in all appointments made by the Secretary of Agriculture.

**John J. Franke, Jr.,**
*Assistant Secretary for Administration.*

Dated: May 11, 1989.

[FR Doc. 89-11762 Filed 5-16-89; 8:45 am]
BILLING CODE 3410-02-M

### Packers and Stockyards Administration

### Amendment to Certification of Central Filing System; Idaho

The Statewide central filing system of Idaho has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Peter T. Cenarrusa, Secretary of State, for farm products produced in that State (51 FR 34236, September 26, 1986; 51 FR 36257, October 9, 1986; and 53 FR 15722, May 3, 1988).

The certification is hereby amended on the basis of information submitted by Pete T. Cenarrusa, Secretary of State, for an additional farm product produced in that State as follows: Millet

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: May 11, 1989.

**B.H. (Bill) Jones,**
*Administrator, Packers and Stockyards Administration.*

[FR Doc. 89-11763 Filed 5-16-89; 8:45 am]
BILLING CODE 3410-KD-M

## COMMISSION ON CIVIL RIGHTS

### California Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m., on Wednesday, May 24, 1989, at the Marriott Hotel, 200 Marina Boulevard, Berkeley, California 94710. The purpose of the meeting is to hold a public forum on violence and bigotry on the University of California campus.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Deborah Hesse or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894/0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Western Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 2, 1989.

**Melvin L. Jenkins,**
*Acting Staff Director.*

[FR Doc. 89-11786 Filed 5-16-89; 8:45 am]
BILLING CODE 6335-01-M

### South Carolina Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 10:45 a.m. and adjourn at 5:00 p.m. on Monday, May 22, 1989, in the Thurmond Federal Office Building, Room 1272, 1835 Assembly Street, Columbia, South Carolina 29201. The Committee will convene a forum on the implications of the Voting Rights Act of 1965 in the State. Invited speakers will address issues of racial minority isolation and participation in the political process. Invited are James Clyburn, Commission, South Carolina Human Relations Commission; I.S. Levy Johnson, Attorney; John Roy Harper, NAACP Attorney; Dr. Blease Graham, Professor, Univeristy of South Carolina; State Senator Frank Gilbert; and Willie B. Ownes, President, Orangeburg NAACP. The Committee will also receive staff reports on the status of the agency and Committee actions and conduct program planning.

Persons desiring additional informaiton, or planning a presentation to the Committee, should contact Committee Chairperson, Dennis W. Shedd or John I. Binkley, Director, Eastern Regional Division at (202) 523–5264, TDD (202) 376–8117. Hearing impaired persons who will attent the meeting and require the services of a sign language interpreter should contacted the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 2, 1989.

**Melvin L. Jenkins,**

*Acting Staff Director.*

[FR Doc. 89–11787 Filed 5–16–89; 8:45 am]

BILLING CODE 6335–01–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Amendment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau; Correction

May 11, 1989.

On page 10402, third column, of the **Federal Register** notice published on March 13, 1989 (54 FR 10402), the limit for Categories 200–239, 300–369, 400–469, 600–670 and 800–899, as a group, should be corrected from 76,590,824 square meters equivalent to 76,596,824 square meters equivalent.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 89–11813 Filed 5–16–89; 8:45 am]

BILLING CODE 3510–DR–M

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

May 11, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** May 19, 1989.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6582. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

*Authority.* Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain cotton and man-made fiber textile products are being increased by application of swing and carryover. The fabric group limit is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 25526, published on July 7, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

May 11, 1989.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on June 30, 1988, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the period which began on July 1, 1988 and extends through June 30, 1989.

Effective on May 19, 1989, the directive of June 30, 1988 is being amended further to adjust the current limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Turkey:

| Category | Adjusted 12-mo limit [1] |
|---|---|
| Fabric group: | |
| 219, 313, 314, 315, 317, 326, 617, 625, 626, 627, and 628, as a group. | 74,752,591 square meters. |
| Limits not in a group: | |
| 300/301 | 3,832,302 kilograms. |
| 604 | 867,207 kilograms. |

[1] The limits have not been adjusted to account for any imports exported after June 30, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 533(a)(1).

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 89–11811 Filed 5–16–89; 8:45 am]

BILLING CODE 3510–DR–M

### Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Turkey

May 11, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** May 19, 1989.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6582. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

*Authority.* Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain cotton textile products are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 25526, published on July 7, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

May 11, 1989.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on June 30, 1988, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the period which began on July 1, 1988 and extends through June 30, 1989.

Effective on May 19, 1989, the directive of June 30, 1988 is being amended further to adjust the current limits for cottom textile products in the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Turkey:

| Category limits not in a group | Adjusted limit [1] |
|---|---|
| 338/339 | 1,469,000 dozen of which not more than 1,028,300 dozen shall be in Categories 338-S/339-S.[2] |
| 341 | 593,250 dozen of which not more than 207,638 dozen shall be in Category 341-Y.[3] |
| 369-S [4] | 835,472 kilograms. |

[1] The limits have not been adjusted to account for any imports exported after June 30, 1988.

[2] In Categories 338-S/339-S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0035, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338-S; and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339-S.

[3] In Category 341-Y, only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[4] In Category 369-S, only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 89-11812 Filed 5-16-89; 8:45 am]

BILLING CODE 3510-DR-M

## Announcement of Request for Bilateral Textile Consultations With the Government of Guatemala

May 11, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

**SUPPLEMENTARY INFORMATION:**

*Authority.* Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles.

On April 26, 1989, the Government of the United States requested consultations with the Government of Guatemala regarding cotton trousers, breeches and shorts in Categories 347/348, produced or manufactured in Guatemala.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with Guatemala, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Guatemala and exported during the twelve-month period which began on April 26, 1989 and extends through April 25, 1990, at a level of 686,682 dozen.

A summary market statement concerning these categories follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of these categories, or to comment on domestic production or availability of products included in Categories 347/348, is invited to submit 10 copies of such comments or information to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The United States remains committed to finding a solution concerning Categories 347/348. Should such a solution be reached in consultations with the Government of Guatemala, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Guatemala—Market Statement**

*Cotton Trousers, Slacks and Shorts (Category 347/348)*

April 1989.

Summary and Conclusions

U.S. imports of cotton trousers, slacks and shorts (Category 347/348) from Guatemala reached 686,682 dozen during the year ending January 1989, more than double the 302,532 dozen imported a year earlier. Cotton trouser, slack and short imports from Guatemala were 672,563 dozen in 1988 and 270,992 dozen in 1987. In the month of January 1989, imports of cotton trousers, slacks and shorts (Category 347/348) from Guatemala reached 59,110 dozen, 31 percent above the 44,991 dozen imported during the month of January 1988.

The U.S. market for cotton trousers, slacks and shorts (Category 347/348) is being disrupted by the sharp and substantial increase of imports from Guatemala.

U.S. Production and Market Share

U.S. production of cotton trousers, slacks and shorts remained relatively flat between 1982 and 1986 averaging 39,700,000 dozen annually. U.S. production increased in 1987

reaching 43,379,000 dozen and then fell during the first nine months of 1988 resulting in a year ending September 1988 production level of 38,165,000 dozen, 12 percent below the 1987 level and four percent below the 1982–86 average level. Domestic manufacturers of cotton trousers, slacks, and shorts lost market share in every year since 1982. Their market share fell from 75 percent in 1982 to 60 percent in 1987, a drop of 15 percentage points. Domestic manufacturer lost another five percentage points as their share of the market plunged to 55 percent in the first nine months of 1988.

U.S. Imports and Import Penetration

U.S. imports of cotton trousers, slacks and shorts more than doubled between 1982 and 1988, increasing from 13,133,000 dozen in 1982 to 30,976,000 dozen in 1988. U.S. imports of Category 347/348 for the year ending January 1989 increased three percent over the year ending January 1988 level. The ratio of imports to domestic production doubled, increasing from 33 percent in 1982 to 67 percent in 1987. The import to production ratio reached 83 percent in the first nine months of 1988.

Duty-Paid Value and U.S. Producers' Price

Approximately 63 percent of Category 347/348 imports from Guatemala during calendar year 1988 entered under TSUSA numbers 381.6210—men's and boys' cotton woven shorts, not ornamented, and 384.4724—women's and girls' cotton woven shorts, not ornamented; and 384.4765—women's cotton woven trousers and slacks except those of denim, corduroy of velveteen, not ornamented. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

[FR Doc. 89–11810 Filed 5–16–89; 8:45 am]
BILLING CODE 3510-DR-M

## Announcement of Request for Bilateral Textile Consultations With the Government of Nepal

May 11, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories on which consultations have been requested, call (202) 377–3740.

**SUPPLEMENTARY INFORMATION:**

*Authority.* Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On April 28, 1989, the Government of the United States requested consultations with the Government of Nepal regarding imports of men's and women's cotton trousers, slacks and shorts in Categories 347/348, produced or manufactured in Nepal.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with Nepal, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Nepal and exported during the twelve-month period which began on April 28, 1989 and extends through April 27, 1990, at a level of 348,911 dozen.

A summary market statement concerning Categories 347/348 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 347/348, or to comment on domestic production or availability of products included in Categories 347/348, is invited to submit 10 copies of such comments or information to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The United States remains committed to finding a solution concerning Categories 347/348. Should such a solution be reached in consultations with the Government of Nepal, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988).

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Nepal—Market Statement**

*Cotton Trousers, Slacks and Shorts (Category 347/348)*

April 1989.

Summary and Conclusions

U.S. imports of cotton trousers, slacks and shorts (Category 347/348) from Nepal reached 348,911 dozen during the year ending January 1989, triple the 119,337 dozen imported a year earlier. Cotton trouser, slack and short imports from Nepal were 321,994 dozen in 1988 and 88,083 dozen in 1987. In the month of January 1989, imports of cotton trousers, slacks and shorts (Category 347/348) from Nepal reached 65,273 dozen, 70 percent above the 38,356 dozen imported during the month of January 1988.

The U.S. market for cotton trousers, slacks and shorts (Category 347/348) is being disrupted by the sharp and substantial increase of imports from Nepal.

U.S. Production and Market Share

U.S. production of cotton trousers, slacks and shorts remained relatively flat between 1982 and 1986 averaging 39,700,000 dozen annually. U.S. production increased in 1987 reaching 43,379,000 dozen and then fell during the first nine months of 1988 resulting in a year ending September 1988 production level of 38,165,000 dozen, 12 percent below the 1987 level and four percent below the 1982–86 average level. Domestic manufacturers of cotton trousers, slacks, and shorts lost market share in every year since 1982. Their market share fell from 75 percent in 1982 to 60 percent in 1987, a drop of 15 percentage points. Domestic manufacturer lost another five percentage points as their share of the market plunged to 55 percent in the first nine months of 1988.

U.S. Imports and Import Penetration

U.S. imports of cotton trousers, slacks and shorts more than doubled between 1982 and 1988, increasing from 13,133,000 dozen in 1982 to 30,976,000 dozen in 1988. U.S. imports of Category 347/348 for the year ending January 1989 increased three percent over the year ending January 1988 level. The ratio of imports to domestic production doubled, increasing from 33 percent in 1982 to 67 percent in 1987. The import to production ratio reached 83 percent in the first nine months of 1988.

Duty-Paid Value and U.S. Producers' Price

Approximately 70 percent of Category 347/348 imports from Nepal during calendar year 1988 entered under TSUSA numbers 381.6210—men's and boys' cotton woven shorts, not ornamented and 384.4724—women's and girls' cotton woven shorts, not ornamented. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

[FR Doc. 89–11809 Filed 5–16–89; 8:45 am]
BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### DIA Advisory Board; Meetings

**AGENCY:** Defense Intelligence Agency Advisory Board.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been changed as follows: The 18 May 1989 meeting has been relocated to the address listed below:.

**ADDRESS:** The Foreign Science and Technology Center, Charlottesville, VA.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340–1328 (202/373–4930).

**SUPPLEMENTARY INFORMATION:** The entire meeting will be devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on HUMINT/Scientific and Technical Intelligence Interface.

L. M. Bynum,

*Alternate OSD Federal Register Liaison, Officer, Department of Defense.*

May 12, 1989.

[FR Doc. 89–11829 Filed 5–16–89; 8:45 am]

BILLING CODE 3810–01–M

## DELAWARE RIVER BASIN COMMISSION

### Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, May 24, 1989 beginning at 1:00 p.m. in the Goddard Conference Room of its offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

The subjects of the hearing will be as follows:

*Proposed Amendment to the Comprehensive Plan to Authorize Future Diversions of Delaware Basin Water from the Proposed Modified Francis E. Walter Reservoir Project.* Commission Resolution No. 83–24 adopted on November 30, 1983 amended the Comprehensive Plan by revising and updating the description of the Bear Creek (modified) Project (renamed Francis E. Walter Project). The Commonwealth of Pennsylvania has recently requested that some of the Walter Reservoir water supply storage be available for use in northeastern Pennsylvania, portions of which lie outside the Delaware River Basin. This could result in some out-of-basin diversions and a 100 percent consumptive use of that water.

**Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact**

1. *Holdover Project: Occidental Chemical Corporation D–85–41.* An application to modify an industrial waste treatment plant at the applicant's polyvinyl chloride manufacturing facility in Burlington Township, Burlington County, New Jersey. Process waste streams include flows from compound, calender and resin operations. The compound facility has been modified by addition of a charcoal filtering system for TSS removal. All process waste streams are combined with storm runoff and up to 0.02 million gallons per day (mgd) of treated sanitary wastes prior to discharge to Bustleton Creek, a tidal tributary to the Delaware River in Burlington Township. Based on monitoring reports, discharge from the facility averages 0.38 mgd. The applicant is seeking relief from the Commission's normal TDS effluent limit of 1000 milligrams (mg)/1 and requests permission to discharge a daily maximum of 2000 mg/1 TDS to Bustleton Creek. In addition, the applicant is to conduct a groundwater decontamination program at the site as per conditions specified in its New Jersey Department of Environmental Protection permit. This hearing continues that of April 26, 1989.

2. *Merck, Sharpe & Dohme D–79–23 RENEWAL–2.* An application for the renewal of a ground water withdrawal project to supply up to 7.2 million gallons (mg)/30 days of water to the applicant's industrial plant from Well No. 8. Commission approval on June 27, 1984 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 25 mg/30 days. The project is located in Upper Gwynedd Township, Montgomery County, and is in the Southeastern Pennsylvania Ground Water Protected Area.

3. *Philadelphia Suburban Water Company D–81–74 CP (Revised) RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 6.0 mg/30 days of water to the applicant's water distribution system from Well Nos. 20 and 20A. Commission approval on May 23, 1984 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 6.0 mg/30 days. The project is located in East Goshen Township, Chester County, and is in the Southeastern Pennsylvania Ground Water Protected Area.

4. *New Jersey—American Water Company D–88–70.* An application for a temporary diversion and discharge of 13.9 mg/30 days of Delaware River water to supply a pilot water treatment plant. Preliminary treatment studies at the pilot scale will provide a design basis for a proposed 30 mgd facility which is intended to meet primary and alternate water source requirements in Burlington, Camden and Gloucester Counties. Treatment plant testing is expected to be completed by April of 1990. The plant site is located in Cinnaminson Township, Burlington County, New Jersey. The project also involves a discharge of 0.45 mgd of finished water and process wastewater. A temporary, screened intake will be installed approximately 1000 feet outshore of the mean high water line, just inshore of the shipping channel, and 600 feet upstream from the proposed discharge pipeline.

5. *Columbia Gas Transmission Corporation D–89–6.* An application to construct a 16 inch diameter natural gas pipeline across and under the Delaware Canal. The crossing is located approximately 2600 feet south of the intersection of Hellertown Road and Route 611 in Williams Township, Northampton County, Pennsylvania. Delaware Canal (Roosevelt State Park) was included in the Comprehensive Plan by Resolution No. 62–4.

6. *Stanley G. Flagg & Co., Inc. D–89–13.* An application to modify an industrial process wastewater treatment plant located on West High Street, Stowe, West Pottsgrove Township, Montgomery County, Pennsylvania. The treatment plant serves iron and brass foundries, and galvanizing facilities to reduce suspended solids and metals. The applicant proposes to modify the existing treatment system with additional chemical precipitation facilities. The plant will process approximately 0.33 mgd and the effluent will be discharged to the Schuylkill

River through the existing outfall. The project is designed to meet proposed NPDES permit modifications.

7. *Arrowhead Public Service Corporation D–89–16 CP.* An application to expand an existing 0.05 mgd sewage treatment plant and provide 0.25 mgd treatment capacity for service of Arrowhead Lakes Development, located in western Coolbaugh Township, Monroe County, Pennsylvania. The proposed treatment process will consist of comminution, primary settling, combined $BOD_5$ Reduction Nitrification, final clarification, chlorination, sludge thickening and post aeration. Treated effluent will continue to discharge to the Lehigh River through the existing outfall.

8. *Transcontinental Gas Pipeline Corp. (Transco) D–89–23.* An application for a surface water withdrawal to hydrostatically pressure test the applicant's natural gas pipeline distribution system. The proposed diversion will average 3.3 mg/30 days. The water will be pumped into the pipeline and impounded under pressure for up to 24 hours before being returned to the water source. The proposed intake is located on the Tunkhannock Creek, approximately one mile northeast of Route 115, in Tunkhannock Township, Monroe County, Pennsylvania.

9. *Transcontinental Gas Pipeline Corp. (Transco) D–89–24.* An application for a surface water withdrawal to hydrostatically pressure test the applicant's natural gas pipeline distribution system. The proposed diversion will average 11.5 mg/30 days. The water will be pumped into the pipeline and impounded under pressure for up to 24 hours before being returned to the water source. The proposed intake is located on the Schuylkill River, near Pawling Road, in Lower Providence Township, Montgomery County, Pennsylvania.

10. *Transcontinental Gas Pipeline Corp. (Transco) D–89–25.* An application for a surface water withdrawal to hydrostatically pressure test the applicant's natural gas pipeline distribution system. The proposed diversion will average 4.5 mg/30 days. The water will be pumped into the pipeline and impounded under pressure for up to 24 hours before being returned to the water source. The proposed intake is located on the Lehigh River, approximately 100 feet north of Route 115, in Buck Township, Luzerne County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

**Richard C. Albert,**

*Acting Secretary.*

May 9, 1989.

[FR Doc. 89–11788 Filed 5–16–89; 8:45 am]

BILLING CODE 6360–01–M

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of Proposed Information Collection Requests.

**SUMMARY:** The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by June 12, 1989.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster (202) 732–3915.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden and (6) Abstract. Because an expedited review is requested, the information collection request is also included as an attachment to this notice.

Dated: May 11, 1989.

**Carlos Rice,**

*Director for Office of Information, Resources Management.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Expedited
*Title:* Grant Applications under the Education of the Handicapped
*Abstract:* This form will be used by State agencies to apply for funding under the Education of the Handicapped Act, as amended. The Department will use the information to make grant awards.
*Additional Information:* An expedited review is requested to meet all FY89 awards and to allow one announcement for the programs. This application contains the standard Forms SF–424 Federal Assistance Face Sheet and SF–424A Budget Information.
*Frequency:* Annually
*Affected Public:* State or local governments; non-profit institutions
*Reporting Burden:*
*Responses:* 2,600
*Burden Hours:* 89,600
*Recordkeeping Burden:*
*Recordkeepers:* 0
*Burden Hours:* 0

BILLING CODE 4000–01–M

NOTICE: Reporting Burden

Public reporting burden for this collection of information is estimated to vary from 22 hours (for continuation applications) to 40 hours (for new applications) per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0028, Washington, D.C. 20503.

PART III - PROGRAM NARRATIVE

A. New Grants

Prepare the program narrative statement in accordance with the following instructions for all new grants programs and all new functions or activities for which support is being requested.

Note that the program narrative should encompass each program and each function or activity for which funds are being requested. Relevant selection criteria (included in this package) should be carefully examined for criteria upon which evaluation of an application will be made and the program narrative must respond to such criteria under the related headings below. The program narrative should begin with an overview statement (Abstract) of the major points covered below.

1. OBJECTIVES AND NEED FOR THIS ASSISTANCE

Describe the problem and demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used.

Any relevant data based on planning studies should be included or footnoted. Projects involving Demonstration/Service activities should present available data, or estimates for need in terms of number of handicapped children (by type of handicap and by type of service) in the geographic area involved.

Projects involving Training should present available data, or estimates, for need in terms of number of personnel by position type (e.g., teachers, teacher-aides) by type of handicap to be served. Documentation by the SEA should be supplied for 84.029 (Handicapped Personnel Preparation).

2. RESULTS OR BENEFITS EXPECTED

Identify results and benefits to be derived. Projects involved in training activities should indicate the number of personnel to be trained. Projects involved in demonstration/service activities must provide research or other evidence that indicate that the proposed activities will be effective.

3. APPROACH

a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program, function or activity provided in the budget. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to others.

For example, an application for demonstration/service programs should describe the planned educational curriculum: the types of attainable accomplishments set for the children served; supplementary services including parent education; and the composition and responsibilities of an advisory council.

An application for a training program should describe the substantive content and organization of the training program, including the roles or positions for which students are prepared, the tasks associated with such roles, the competencies that must be acquired; the program staffing, and the practicum facilities including their use by students, accessibility to students and their staffing.

b. Provide for each grant program, function or activity, quantitative projections of the accomplishments to be achieved.

An applications for demonstration/service programs should project the number of children to receive demonstration/services by type of handicapping conditions, and number of persons to receive inservice training.

Training programs should project the number of students to be trained by type of handicapping condition.

For non-demonstration/service and non-training activities of all programs, planned activities should be listed in chronological order to show the schedule of accomplishment and their target dates.

c. Identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and successes of the project. For demonstration/service

child-centered objectives set for project participants. For 84.029 (Handicapped Personnel Preparation), the positions for which students are receiving training should be related to the needs as explained in 1 and 2 above.

For all activities, explain the methodology that will be used to evaluate project accomplishments.

d. List organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Especially for demonstration/service activities, describe the liaison with community or State organizations as it affects project planning and accomplishments.

e. Present biographical sketch of the project director with the following information: name, address, telephone number, background, and other qualifying experience for the project. Also, list the names, training and background for other key personnel engaged in the project.

NOTE - The application narrative should not exceed 30 double-spaced typed pages (on one side only).

[FR Doc. 89-11767 Filed 5-16-89; 8:45 am]
BILLING CODE 4000-01-C

## Office of Education Research and Improvement

### National Research and Development Center Fiscal Year 1990 Competition; Solicitation of Written Public Comments

**ACTION:** Notice to Solicit Written Public Comments on the Upcoming FY 1990 Competition for National Research and Development Centers.

*Purpose:* The Secretary invites written public comments on problems and issues facing American education in the nineties, areas for research, and potentially fruitful lines of inquiry within these areas. These written comments will be considered by the Office of Educational Research and Improvement in establishing priorities in the upcoming FY 1990 competition for national research and development centers.

*Deadline for Transmittal of Written Comments:* All written comments should be received on or before June 23, 1989.

*Applicable Regulations:* The regulations for the Regional Educational Laboratories and Research and Development Centers Programs, 34 CFR Parts 706, 707, and 708.

*Request for Information:* For additional information call or write Jacqueline W. Jenkins, U.S. Department of Education, OERI, Office of Research, Room 610, 555 New Jersey Avenue, NW., Washington, DC. 20208–5573, (202) 357–6239.

**SUPPLEMENTARY INFORMATION:** The Secretary plans to publish at a later date an application notice for the competition to be conducted in FY 1990 for the national research and development centers to be awarded in FY 1991.

*Invitation to Comment:* Written comments received on or before the date specified above will be considered in preparing final mission statements that will describe the Department's recommendations for the research areas, activities, and objectives of the national research and development centers.

**Program Authority:** 20 U.S.C. 1221e.

Dated: May 11, 1989.

**Bruno V. Manno,**

*Acting Assistant Secretary, Educational Research and Improvement.*

[FR Doc. 89–11768 Filed 5–16–89; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Financial Assistance Award (Grant); Electric Power Research Institute

**AGENCY:** U.S. Department of Energy (DOE): San Francisco Operations Office.

**ACTION:** Notice of intent to award a grant on a sole source basis.

**SUMMARY:** The Department of Energy intends to award a grant to the Electric Power Research Institute to assist them in conducting the Fourth National Utility Demand Side Management (DSM) Conference. This conference provides a biennial opportunity for utility and State energy efficiency program managers to meet and store current information on the planning and operation of utility DSM programs. The conference has two primary objectives: to facilitate the exchange of DSM research and implementation results and encourage the advancement of knowledge, and to publish and distribute the technical papers presented at the conference. DOE's contribution of $20K is approximately fifteen percent of the total conference cost.

This conference would be held using state and private sector resources but DOE has determined that cosponsoring it would help fulfill the mandate to provide technical assistance under its Residential and Commercial Conservation Program. This is a sole source award because DOE knows of no other entity which is conducting or is planning to conduct this type of conference at this time.

Grant Number: DE–FG03–89SF18089.

**FOR FURTHER INFORMATION CONTACT:** William O'Neal, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA April 28, 1989.

**Kathleen M. Day,**

*Acting Director, Contracts Management Division.*

[FR Doc. 89–11832 Filed 5–16–89; 8:45 am]

BILLING CODE 6450–01–M

### Financial Assistance Award (Cooperative Agreement); University of Oregon

**AGENCY:** U.S. Department of Energy (DOE); San Francisco Operations Office.

**ACTION:** Notice of intent to award a cooperative agreement on the basis of noncompetitive financial assistance.

**SUMMARY:** The Dept. of Energy intends to enter into a five year, cost shared cooperative agreement with the University of Oregon to assist their research to aid the U.S. housing industry in developing strategies, technologies and methodologies for improving the energy efficiency of residential housing. The focus will be on industrial construction methods. Tasks for the first year include establishment of a technical review committee (comprised of representatives from DOE, the two research centers, the building industry and other housing related research organizations, and preparation of a detailed research plan. The project is expected to have a five (5) year life including five (5) separately funded one (1) year budget periods. Congress has appropriated $700K in FY 89 funds for the first year of this effort. DOE support for this work will enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct this activity. In the Committee action for FY89 Interior and Related Agencies Appropriation Bill, HR 4867, the committee recommended that this work be performed at the University of Oregon and the Florida Solar Energy Center. Additional funding will be provided for each respective budget period. Total estimated cost for the project is $6.5M which includes a $.9M awardee share and $5.6M government share. The period of performance is expected to start June 1989, and expire five years thereafter.

*Cooperative Agreement Number:* DE–FC03–89SF17960.

**FOR FURTHER INFORMATION CONTACT:** William O'Neal, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA April 29, 1989.

**Kathleen M. Day,**

*Acting Director, Contracts Management Division.*

[FR Doc. 89–11833 Filed 5–16–89; 8:45 am]

BILLING CODE 6450–01–M

## Office of Fossil Energy

**[ERA Docket No. 89–07–NG]**

### Chevron Natural Gas Services, Inc.; Order Granting Blanket Authorization to Import and Export Natural Gas From and to Mexico

**AGENCY:** Office of Fossil Eenrgy, DOE.

**ACTION:** Notice of order granting blanket authorization to import natural gas from and export natural gas to Mexico.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Chevron Natural Gas Services, Inc.

(CNGS), blanket authorization to import and export natural gas from and to Mexico. The order issued in ERA Docket No. 89–07–NG authorizes CNGS to import up to 100 Bcf of Mexican natural gas and export up to 100 Bcf of domestic natural gas to Mexico over a two-year period beginning on the date of first import or export.

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except on Federal holidays.

Issued in Washington, DC, May 9, 1989.

J.E. Walsh, Jr.,

*Acting Assistant Secretary Fossil Energy.*

[FR Doc. 89–11834 Filed 5–16–89; 8:45 am]

BILLING CODE 6450–01–M

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[FE Docket No. 89–24–NG]

## Consolidated Edison Co. of New York, Inc.; Application for Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application for a long-term authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on March 30, 1989, of an application filed by Consolidated Edison Company of New York, Inc. (Con Edison), for authorization to import up to 30,000 MMBtu of natural gas from Canada for a term of approximately 15 years, beginning as soon as possible after all governmental authorizations are received by Con Edison and its Canadian supplier, Amoco Canada Petroleum Company, Ltd. (Amoco Canada), and all additional transportation facilities needed to transport the imported gas into Con Edison's system have been constructed and are operational.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than June 16, 1989.

**FOR FURTHER INFORMATION CONTACT:**

Edward J. Peters, Jr., Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8162.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

**SUPPLEMENTARY INFORMATION:** Con Edison, a combination gas, electric, and steam utility company providing natural gas service to customers in New York City and Westchester County in New York State, proposes to import this gas from Amoco Canada under a gas purchase contract dated September 1, 1988. Con Edison would use the imported gas to supplement its system supply. In its application, Con Edison states that the initial term of the purchase contract is to run through October 31, 14 years after the first year of the contract. The contract also provides for secondary term of five years unless either party gives notice of termination. The first contract year will commence on the date of initial delivery of the gas and on the next following October 31.

The purchase price for the imported gas would be composed of a two-part demand/commodity rate. The monthly demand charge would equal the sum of the monthly demand tolls paid by Amoco Canada to Nova Corporation of Alberta (Nova) and TransCanada PipeLines Limited (TCPL) for the transportation of the gas in Canada. The commodity charge would equal the average of the sales rates of Con Edison's three principal domestic pipeline suppliers (Base Index), minus the Canadian and domestic transportation charges (both demand and commodity). During summer seasons, the commodity charge would be subject to price caps. Specifically, the commodity charge for all gas taken up to 35 percent of the maximum daily contract quantity (MDQ) of 30,000 MMBtu per day could not exceed the equivalent of designated fuel oil prices and, for gas taken in excess of 35 percent of the MDQ, the Base Index would be reduced to the same equivalent of designated fuel oil prices, subject to a specified floor price. The application asserts that the purchase contract prescribes that the commodity charge would be calculated monthly and that after 1995, either party may request a redetermination of the commodity charge is the Base Index component differs by more than a specific amount for spot gas sales. The purchase contract also permits termination by either party if agreement on redetermination cannot be reached and provides for a phaseout period of up to four years. All of the price provisions of the purchase contract are subject to renegotiation upon notice by either party and if agreement cannot be reached, either party may request that the matter be submitted to arbitration in accordance with the procedures prescribed in the contract.

Con Edison has no take-or-pay obligation under the purchase contract but would be subjected to a gas inventory charge (GIC) based on the average of the gas inventory charge rates of Con Edison's primary domestic pipeline suppliers. The monthly GIC would be subject to refund based on cumulative purchases over a contract year.

Con Edison states that delivery of gas would begin as soon as possible after all governmental authorizations are received and after all necessary transportation facilities have been constructed and placed into service. The purchase contract provides that if construction of the required facilities has not commenced by April 3, 1991, either party may request termination of the contract. Transportation of the gas from the point of delivery at the international border near Niagara, Ontario, to Con Edison's gas distribution facilities in New York City will be through the pipeline systems of Transcontinental Gas Pipeline Company (Transco), Tennessee Gas Pipeline Company (Tennessee), and National Fuel Gas Supply Corporation (National Fuel). According to Con Edison, each of the transporters has an application pending before the Federal Energy Regulatory Commission (FERC) proposing to construct and operate the new pipeline facilities which would be required before Con Edison can begin importing this gas. Tennessee's application in FERC Docket No. CP88–171–000 is to construct pipeline looping and compression facilities on its Niagara Spur Line from Niagara to its Lewiston, New York, interconnection with National Fuel. National Fuel's application in FERC Docket No. CP88–194–000 is to construct a compressor station and pipeline facilities from Lewiston to a proposed interconnection with Transco at Leidy, Pennsylvania. Transco's application in FERC Docket No. CP88–171–000 is to construct pipeline looping and compression facilities between Leidy and New York City.

In support of its application, Con Edison asserts that the imported gas is

needed to meet projected increases in its system requirements. Con Edison also contends that the gas would be purchased in accordance with flexible pricing terms assuring that the import would be competitive over the term of the requested authorization. Further, according to the application, Amoco Canada would dedicate 170 Bcf of specified reserves to the contractual arrangement thus assuring the ability of Amoco Canada to supply the gas to Con Edison.

The decision on Con Edison's application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other considerations include, but are not limited to, need for the gas and the security of the long-term supply. The applicant asserts that this import arrangement is competitive, the gas is needed, and the in FERC Docket No. CP88–171–000 is to construct pipeline looping and compression facilities on its Niagara Spur Line from Niagara to its Lewiston, New York, interconnection with National Fuel. National Fuel's application in FERC Docket No. CP88–194–000 is to construct a compressor station and pipeline facilities from Lewiston to a proposed interconnection with Transco at Leidy, Pennsylvania. Transco's application in FERC Docket No. CP88–171–000 is to construct pipeline looping and compression facilities between Leidy and New York City.

In support of its application, Con Edison asserts that the imported gas is needed to meet projected increases in its system requirements. Con Edison also contends that the gas would be purchased in accordance with flexible pricing terms assuring that the import would be competitive over the term of the requested authorization. Further, according to the application, Amoco Canada would dedicate 170 Bcf of specified reserves to the contractual arrangement thus assuring the ability of Amoco Canada to supply the gas to Con Edison.

The decision on Con Edison's application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other considerations include, but are not limited to, need for the gas and the security of the long-term supply. The applicant asserts that this import arrangement is competitive, the gas is needed, and the supply source is secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

**NEPA Compliance**

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. The FERC is currently performing an environmental review of the impacts of constructing and operating the proposed pipeline facilities of Transco, Tennessee, and National Fuels before making its decision on their certificate applications. The DOE will participate in the environmental review process at the appropriate level. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities regarding the Con Edison application.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t., June 16, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a conditional or final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Con Edison's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 9, 1989.

**J.E. Walsh, Jr.,**

*Acting Assistant Secretary, Fossil Energy.*

[FR Doc. 89–11835 Filed 5–16–89; 8:45 am]

BILLING CODE 6450–01–M

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**[FE Docket No. 89–22–NG]**

## Indeck Energy Services of Oswego, Inc., Application To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application for long-term authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on March 28, 1989, of an application filed by Indeck Energy Services of Oswego, Inc. (Indeck-Oswego), for authorization to import up to 4.5 Bcf per year of natural gas from Canada for a term of 15 years. The gas would be transported within the U.S. through existing and proposed pipeline facilities. Indeck-Oswego requests that the authorization

commence November 1, 1990, the date that the new facilities required to transport this gas are planned to be completed and operational. The gas would be used to fuel the applicant's new cogeneration facility to be constructed near Oswego, New York.

The application is filed pursuant to section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed no later than June 16, 1989.

**FOR FURTHER INFORMATION CONTACT:**

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9394

Diane Stubbs, Natural and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

**SUPPLEMENTARY INFORMATION:** Indeck-Oswego, an Illinois corporation, is a wholly-owned subsidiary of Indeck Energy Services, Inc. (Services), also an Illinois corporation, with its principal office in Wheeling, Illinois. Services and its subsidiaries are engaged in the development, ownership, operation and maintenance of cogeneration projects. Indeck-Oswego is currently constructing a new 50-megawatt gas-fired cogeneration facility adjacent to the International Paper/Hammermill Paper Company plant near Oswego, New York. The cogenerator is expected to be completed and in commercial operation by June 1, 1990. It will be operated as a "qualifying facility" under Section 201 of the Public Utility Regulatory Policies Act of 1978. In addition, Indeck-Oswego has filed a Certification of Compliance with the coal capability requirement for proposed new electric powerplants pursuant to the Powerplant and Industrial Fuel Use Act of 1978, as amended (53 FR 35544, September 14, 1988).

Indeck-Oswego states that all the natural gas imported under its requested authorization will be used to fuel the new cogeneration facility. Under anticipated normal operating conditions, the cogenerating facility will consume an average of about 12,000 Mcf per day. Indeck-Oswego asserts that its request for authority to import up to 4.5 Bcf per year is necessary to meet the facility's fuel needs, allow for transportation shrinkage, and provide a reasonable margin for any unforeseen exigency. The electric power to be produced by the facility is under contract for sale to Niagara Mohawk Power Corporation (Niagara Mohawk).

Indeck-Oswego will buy the Canadian gas from Indeck Gas Supply Corporation (Supply), a wholly-owned subsidiary of Services, in accordance with their gas purchase agreement dated December 27, 1988. Supply has agreed to sell and deliver up to a maximum of 14 MMcf of gas per day and up to an annual contract quantity of 4.5 Bcf. The price will equal Supply's weighted average cost of the gas delivered to Indeck-Oswego, including a management fee described below, and all costs related to transportation in Canada by NOVA Corporation of Alberta and TransCanada PipeLines Limited (TCPL) to the point at the international border where Indeck-Oswego receives the volumes. The term of the agreement between Indeck-Oswego and Supply extends through January 1, 2006, with provision for extension for subsequent periods of one year, until terminated by a 12-month notice in writing by either party. Indeck-Oswego estimates that the delivered price it will pay Supply during the first year of the proposed import arrangement would be $2.52 per Mcf. Indeck-Oswego bases this estimate on its calculation of Supply's weighted average cost of gas per Mcf purchased from producers under four contracts submitted as part of this application.

The volumes of gas that Supply has available for resale to Indeck-Oswego will be provided by Northstar Energy Corporation (Northstar), Chesapeake Resouirces Ltd., *et al.* (Chesapeake, *et al.*), and Bow Valley Industries, Ltd. (Bow Valley). Together, those Canadian producers contractually agreed to sell to Supply, on a firm basis, a total of up to 25.8 MMcf per day and up to 9.34 Bcf of natural gas per year as well as up to .33 Bcf of natural gas per year on an interruptible basis. According to the application, after TCPL's transportation shrinkage allowance, estimated to be approximately 7 percent, these volumes net Supply a total of 9.0 Bcf per year or up to 24.0 MMcf per day for export at the international border. Of the total volumes purchased by Supply from the producers, 4.5 Bcf per year or 12.0 MMcf per day will be sold to Indeck-Oswego. The remaining 4.5 Bcf purchased annually will be sold by Supply to Indeck-Oswego's affiliate, Indeck-Yerkes Energy Services, Inc. (Indeck-Yerkes), to fuel a cogeneration facility it is planning to build near Tonawanda, New York. Indeck-Yerkes has an application for authority to import that gas from Supply pending before the DOE in FE Docket No. 89–21–NG.

Indeck-Oswego states that the four contracts encompassing the entire quantity of gas purchased by Supply will be administered by a single producer, Bow Valley. Bow Valley will also act as Supply's liaison with TCPL for the transportation of Supply's gas through TCPL's system. For this service, Bow Valley will receive a fee from Supply of approximately $0.02 (U.S.) per Mcf of purchased gas which will be included in the price of gas paid by Indeck-Oswego.

Indeck-Oswego described Supply's gas purchase agreements with the Canadian producers as follows:

**A. Northstar Agreement**

Under the Northstar gas purchase agreement, Supply will purchase with a lump sum payment in the amount of $13.65 million (U.S.) to be paid on November 1, 1989, a total volume of 26 million MMBtu (approximately 26 Bcf) of natural gas to be delivered over a maximum term of 18 years. Additionally, Supply will reimburse Northstar for its actual production taxes, and gathering and processing costs, based on an initial rate of $.315 (U.S.) per MMBtu. This initial rate is to be increased annually by an amount equal to the greater of five percent or the U.S. GNP deflator commencing on January 1, 1989. Supply will reimburse Northstar for all related royalty payments and all transportation costs to the point of delivery near Empress, Alberta. Supply also agreed to a minimum take of at least 6,000 MMBtu of gas per day and contends that it is highly unlikely that Supply will be unable to take at least that amount at any time during the term because the average combined daily requirements of the two cogeneration facilities consuming this gas is estimated to total 24,000 Mcf per day.

**B. Chesapeake, et al., Agreement**

The Chesapeake group of producers have agreed to sell Supply a total of up to 7,078 Mcf per day of natural gas over an initial term of 15 years. Additional non-firm volumes may be purchased if needed in any year. Under the Chesapeake agreement, Supply will take title to the gas delivered to the Alberta border at an initial price of $1.67 (U.S.) per Mcf. Commencing January 1, 1991, and each year thereafter, the contract price will escalate by three percent of the preceding contract year price. Supply also agreed to pay an annual bonus set by a formula essentially fixing the price of the gas, subject to ceiling

amounts, to the price received by the Oswego cogeneration project for electric power sold to Niagara Mohawk. The bonus payments would start in 1992, when the maximum bonus payment would be $.12 per Mcf and could gradually rise to a maximum of $3.75 per Mcf in 2004 as the price paid for the electric power exceeds the specified floor rate which increases beginning in 1998.

The Chesapeake contract volumes will be produced from dedicated reserves that are to be verified annually by an independent engineering firm. Further, in the event the firm sales volumes ae not delivered, Supply's agreement provides that the Chesapeake producers must reimburse Supply for the reasonable cost of securing substitute production from other sources.

C. Bow Valley Agreements

Supply has two contracts with Bow Valley, dated February 13, and March 13, 1989, under which Bow Valley will sell Supply, on a firm basis, a combined total of up to 12,500 Mcf of Canadian natural gas per day for an initial term of 15 years. Supply has agreed to take or pay for a total of 4.56 Bcf of gas per year, but is given the right to receive any prepaid volumes at any time up to two years after the end of the term of the agreements. Supply will take title to the gas at a point of interconnection between Bow Valley's and TCPL's transmission facilities located in Saskatchewan. The pricing provisions of Bow Valley's February agreement are identical to those of the Chesapeake agreement. The initial price will be $1.67 (U.S.) per Mcf and escalates each year by three percent, plus a bonus to be determined under the same formula contained in the Chesapeake contract. The March agreement provides for the same $1.67 price and bonus formula, but provides for a four percent annual escalation to the initial price. Bow Valley has agreed to pay for the transportation to its interconnection with TCPL and any Canadian taxes, royalties and duties assessed on the delivered gas. Bow Valley will guarantee delivery of at least 12,500 Mcf per day from its own reserves and has agreed to secure substitute production from other sources in the event it incurs a production problem or for some other reason cannot deliver the contract volume as agreed.

The point of delivery for the gas imported by Indeck-Oswego to enter the U.S. will be at an interconnection between TCPL and a new border facility near and parallel to the existing facilities of Tennessee Gas Pipeline Company (Tennessee) in the vicinity of Niagara Falls, New York. Indeck-Oswego states that national Fuel Gas Supply (National) will transport up to 12,000 Mcf per day of its imported gas on a firm basis from Niagara Falls through the new Niagara Spur Loop Line that would be constructed and jointly owned by Tennessee, National, and PennEast Gas Service Company, to a point of interconnection with the existing facilities of CNG Transmission Corporation (CNG) at Marilla, New York. From this point, the import will be delivered by CNG to Niagara Mohawk's system for subsequent delivery to Indeck-Oswego's cogeneration facility.

In support of its application, Indeck-Oswego states that the imported gas is needed as a long-term fuel supply for its new cogeneration facility and that the gas would be purchased under competitive pricing terms with sufficient flexibility to assure that the imported gas would remain competitive over the term of the requested authorization. Indeck-Oswego further asserts that Supply's agreements with its several Canadian sources of supply assures it a secure supply of gas over the term.

The decision on Indeck-Oswego's application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination include need for gas, security of the long-term supply, and any relevant issues that may be unique to cogeneration facilities. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is competitive and its gas source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. The FERC, in Docket Nos. CP88–94–000, CP88–194–000, and CP88–171–000, encompassing the projects of National and Tennessee, is currently performing an environmental review of the impacts of constructing and operating the proposed pipeline facilities through which National would transport the import before making its decision on the certificate applications. The DOE will participate in the environmental review process at the appropriate level. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities regarding the Indeck-Oswego application.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC. 20585. They must be filed no later than 4:30 p.m., e.d.t., June 16, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trail-type hearing. Any requests to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an

oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trail-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a conditional or final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Indeck-Oswego's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., May 9, 1989.

**J.E. Walsh, Jr.,**

*Acting Assistant Secretary Fossil Energy.*

[FR Doc. 89–11836 Filed 5–16–89; 8:45 am]

BILLING CODE 6450–01–M

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**[FE Docket No. 89–25–NG]**

## Midwestern Gas Transmission Co. and Viking Gas Transmission Co.; Application To Transfer Natural Gas Import Authorizations

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Joint application to transfer authorizations to import Canadian natural gas from Midwestern Gas Transmission Company to Viking Gas Transmission Company.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 17, 1989, of a joint application filed by Midwestern Gas Transmission Company (Midwestern) and Viking Gas Transmission Company (Viking) requesting that the authorizations to import Canadian natural gas previously granted to Midwestern be transferred to Viking. Viking would accept all terms and conditions under the import authorizations and the transfer would not result in a change in the provisions of Midwestern's current gas supply arrangements.

Since the only change represented by this application is the proposed transfer of the import authority from Midwestern to Viking, the DOE believes that the sole relevant issue in this case is the impact of the transfer on Midwestern's customers. Accordingly, we are establishing a shortened comment period of 15 days.

The application is filed pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than June 1, 1989.

**FOR FURTHER INFORMATION:**

Robert Groner, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1657

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

**SUPPLEMENTARY INFORMATION:** Viking, a Delaware corporation with its principal place of business in Houston, Texas, is a wholly owned subsidiary of Tennessee Gas Pipeline Company (Tennessee). The parent corporation for these related businesses is Tenneco Inc.

Midwestern is an interstate natural gas pipeline corporation which owns and operates two separate natural gas pipelines, a Northern System and a Southern System. The Northern System imports all of its gas supply from Canada and extends southeasterly from the Canadian border near Emerson, Manitoba, through Minnesota, North Dakota and Wisconsin where the gas is sold for resale. In contrast, the Southern System originates in Tennessee, and stretches in a northwesterly direction through Kentucky and Indiana before terminating near Joliet, Illinois. Virtually all of the Southern System's gas supply is obtained from Tennessee.

In 1988, Midwestern formed Viking so that its Northern and Southern Systems would be operated through separate corporate entities. On April 6, 1989, the Federal Energy Regulatory Commission (FERC Docket No. CP88–679–000) authorized Viking to acquire and operate Midwestern's Northern System. Viking will assume Midwestern's rights and obligations under Midwestern's service agreements and Midwestern's supply arrangements.

In the present application Midwestern is proposing to transfer its import authorizations attendant to the Northern System to Viking. Midwestern is currently authorized to import a total quantity of 380,560 Mcf of gas per day from TransCanada PipeLines Limited (TransCanada) under four gas purchase contracts. There are three long-term authorizations encompassing the entire quantity of gas imported by Midwstern from TransCanada under those contracts. *See*, Federal Power Commission (FPC) Opinion No. 577 issued April 30, 1970 (43 FPC 635); Economic Regulatory Administration (ERA) order issued November 9, 1989, in Docket No. 78–009–NG (an unnumbered and unpublished order); and DOE/ERA Opinion and Order No. 57A issued March 21, 1986 (1 ERA Para. 70,592). In addition, the ERA issued DOE/ERA Opinion and Order No. 113 on March 21, 1986 (1 ERA Para. 70,635), granting Midwestern separate blanket authority to import up to 200 Bcf of gas from a variety of Canadian suppliers over a two-year period, beginning on the date of first delivery. Midwestern has not commenced deliveries under this authorization.

Viking and Midwestern assert that the Northern and Southern Systems are physically separated and face different commercial demands and climatic conditions. As a result, they contend that the two systems call for different managerial, operational, and regulatory approaches. The applicants propose as part of the transfer of ownership to restructure the legal relationship between the Northern System and its customers to reflect the actual economic relationship. To transfer the ownership and control of the Northern System to Viking, it is necessary that Midwestern's import authorizations attendant to the Northern System also be transferred. Viking and Midwestern state that this transfer of import authorizations is not inconsistent with the public interest and should be approved.

This joint application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. Based on the application, the only change represented by this joint petition is the proposed transfer of the import authority from Midwestern to Viking. TransCanada would remain the supplier of the gas and the contractual terms and volumes imported would remain the same. Accordingly, the competitiveness of the import arrangements, need, and security of supply are not expected to be issues in this proceeding. The DOE believes that the sole relevant issue in this case is the impact of the transfer of the import authority on Midwestern's customers. Parties, especially those that may oppose this joint application,

should address that issue in their comments.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.d.t., June 1, 1989.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of the Midwestern and Viking joint application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 9, 1989.

J.E. Walsh, Jr.,

*Acting Assistant Secretary Fossil Energy.*

[FR Doc. 89–11837 Filed 5–16–89; 8:45 a.m.]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPE FRC–3572–6]**

### Financial Assistance Program Eligible for Review

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability and review.

**SUMMARY:** The Environmental Protection Agency's (EPA) Pollution Prevention Office (PPO) is announcing the availability of $3 million in grant/cooperative agreement funds under the Pollution Prevention Incentives for States program. The purpose of this program is to support state- and regional-level pollution prevention programs that address the reduction of pollutants across all environmental media: air, land, surface water, ground water, and wetlands. The grants/cooperative agreements will be awarded under the authorities of: Secton 8001 of the Resource Conservation and Recovery Act (RCRA); Section 104(b)(3) of the Clean Water Act (CWA); Section 103 of the Clean Air Act (CAA); Section 10 of the Toxic Substances Control Act (TSCA); and Section 1442(b)(3)(c) of the Safe Drinking Water Act (SDWA). Eligible applicants are state and interstate agencies.

**FOR FURTHER INFORMATION CONTACT:** Jackie Krieger or Brian Symmes, Office of Policy, Planning, and Evaluation (OPPE), Pollution Prevention Office (PPO), Mail Code PM–219, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Phone: (202) 245–4167.

**SUPPLEMENTARY INFORMATION:** In March 1989, EPA awarded $3.8 million in grants to 13 states and one regional organization to support the establishment and expansion of multimedia "Source Reduction and Recycling Technical Assistance" programs. The availability of funds under that program was announced in the **Federal Register** in July 1988, applications were submitted by September 30, 1988, the application review process was completed in January 1989, and awards were announced in March 1989.

With this publication, EPA is announcing the availability of an additional $3.2 million in grant/cooperative agreement funds in fiscal year 1989. Since the establishment of the initial program in July 1988, EPA has established a new office charged with coordinating pollution prevention activities at EPA Headquarters and with EPA Regional offices. This new office, the Pollution Prevention Office in the Office of Policy, Planning, and Evaluation, is responsible for managing this pollution prevention assistance program. Consistent with the scope of the Agency's commitment to pollution prevention, this program is called the "Pollution Prevention Incentives for States" program (this name has been changed from the "Source Reduction and Recycling Technical Assistance" program). The Catalogue of Federal Domestic Assistance number assigned to this program is 66.900. EPA expects to make at least ten grant/cooperative agreement awards in amounts not to exceed $300,000 in fiscal year 1990. Organizations awarded funds will be required to contribute at least 10% of the total cost of their project. Eligible applicants are state and interstate agencies. Programs in all stages of development—from well-established programs to less developed programs—are eligible for funding. Those organizations funded in March of this year are not eligible for funding again in FY 1989.

On January 26, 1989, EPA published in the **Federal Register** a proposed policy statement describing: (1) EPA's commitment to pollution prevention through source reduction and environmentally sound recycling; and (2) the development and implementation of an Agency-wide pollution prevention program. EPA's pollution prevention program focuses on several key areas, including:

- Ensuring that pollution prevention concepts are incorporated into every feasible aspect of internal EPA decision making and planning at the Headquarters and Regional levels;

• Supporting state and local pollution prevention programs;

• Developing an outreach program targeted at state and local governments, industry, business, and consumers designed to emphasize the opportunities for and benefits of pollution prevention;

• Developing and maintaining a multimedia clearinghouse to provide educational and technical information on pollution prevention; and

• Collecting, disseminating, and analyzing data for the purpose of evaluating national progress in multimedia pollution prevention.

While significant progress has been made over the last 18 years in improving the quality of the environment through implementation of media-specific pollution control programs, there are limits to how much more environmental progress can be achieved through current end-of-pipe control programs that stress treatment and disposal after pollution has been generated. EPA believes that further improvements in environmental quality will be best achieved by preventing the generation of potentially harmful pollutants that may be released to all environmental media—air, land, surface water, ground water, and wetlands—through source reduction and environmentally-sound recycling practices.

In implementing a national pollution prevention program, EPA believes that state organizations must play a primary role in encouraging a shift in environmental management priorities for industry, businesses, local governments and the public. Because state organizations have closer, more direct contact with generators and hence are more aware of generators needs and problems EPA believes that state-based environmental programs can make unique contributions in working directly with industry, businesses, local governments, and other groups and individuals on source reduction and recycling. Therefore, important aims of EPA's pollution prevention program are to support states in expanding pollution prevention programs, to foster federal/state information sharing and communication, and to test different pollution prevention approaches and methodologies.

Funds awarded under this grant/cooperative agreement program must be used to support innovative pollution prevention programs that address the transfer of potentially harmful pollutants across all environmental media—air, land, surface water, ground water, and wetlands. Such innovative programs should reflect comprehensive and coordinated pollution prevention planning and implementation efforts. State and interstate agencies seeking funding under this grant program should focus on, for example:

• Demonstrating the impact of institutionalizing multimedia pollution prevention as an environmental management priority, establishing prevention goals, and developing strategies to meet those goals.

• Initiating demonstration projects that support and test innovative pollution prevention applications and integrate pollution prevention ethic within both governmental and non-governmental institutions of the state or region;

• Other multimedia prevention activities, including but not limited to: Providing direct technical assistance to businesses; collecting and analyzing data to target outreach and technical assistance opportunities; conducting outreach activities; developing measures to determine pollution prevention progress; and identifying regulatory and non-regulatory barriers and incentives to pollution prevention.

To apply for funds, state and interstate agencies must:

(1) Submit a letter of intent to participate, signed by the organization's senior manager (e.g., if state environmental agency, by agency's secretary or commissioner) to Jackie Krieger at EPA (see address above) by Wednesday, May 31, 1989, and

(2) Submit a complete grant application package to the Grants Operations Branch at EPA (see address below) by Tuesday, August 15, 1989. *Applications received after August 15, 1989 will not be considered for an award.*

A grant/cooperative agreement application package will be available in May 1989. The package will contain an EPA application form, instructions and additional guidance for completing the application, and further information on EPA's pollution prevention program. Application packages will be sent to all organizations submitting a letter of intent to participate. Application packages can also be obtained by contacting Jackie Krieger of the Pollution Prevention Office at the address listed above in the "Further Information" section.

Because this program is being renamed and assigned a Catalogue of Federal Domestic Assistance number, we are reannouncing its eligibility for intergovernmental review under Executive Order 12372, and the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. States' Single Point of Contact (SPOC) must notify the following office in writing within thirty days of this publication whether their state's official E.O. 12372 process will review applications in this program: Grants Policies and Procedures Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Applicants must contact their state's SPOC for intergovernmental review as early as possible to determine if the program is subject to the state's official E. O. 12372 review process and what material must be submitted to the SPOC for review. In addition, applications including projects within a metropolitan area must be sent to the areawide/regional/local planning agency designated to perform metropolitan or regional planning for the area for their review.

SPOCs and other reviewers should send their comments concerning applications to the Grants Operations Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, no later than sixty days after receipt of an application/other required materials for review.

Dated: May 10, 1989.

**Robert H. Wayland III,**

*Acting Assistant Administrator.*

[FR Doc. 89-11822 Filed 5-16-89; 8:45 am]

BILLING CODE 6560-50-M

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**[OPTS-44530; FRL-3572-4]**

## TSCA Chemical Testing; Receipt of Test Data

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the receipt of test data on methyl tert butyl ether (CAS No. 1634-04-4) submitted pursuant to a consent order and 1,2-dichloropropane (CAS No. 78-87-5), 1,2,4,5-tetrachlorobenzene (CAS No. 95-94-3) and 1,2-dichlorobenzene (CAS No. 95-50-1) submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** Section 4(d) of TSCA requires EPA to publish a

notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

**I. Test Data Submissions**

Test data for methyl tert butyl ether was submitted by the Methyl tertiary Butyl Ether Committee (MTBE Health Effects Testing Task Force) pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on April 20, 1989. The submission describes a sex-linked recessive lethal test in *Drosophila melanogaster*. Mutagenicity testing is required by this consent order.

Test data for 1,2-dichloropropane were submitted by the Dow Chemical Corporation pursuant to a test rule at 40 CFR 799.1550. Two studies were received by EPA on April 24, 1989. The submissions describe: (1) Pharmacokinetics and metabolism in Fischer 344 rats following oral and inhalation exposure to 1,2-dichloropropane and (2) an oral teratology study in New Zealand white rabbits administered, 1,2-dichloropropane. Pharmacokinetics and teratology testing are required by this test rule.

Test data for 1,2-dichlorobenzene was submitted by the Chemical Manufacturers Association pursuant to a test rule at 40 CFR 799.5055. The study was received by EPA on April 28, 1989. The submission describes the determination of the hydrolysis potential of 1,2-dichlorobenzene as function of pH. Chemical fate testing is required by this test rule.

Test data for 1,2,4,5-tetrachlorobenzene were submitted by the Chemcial Manufacturers Association pursuant to final test rules at 40 CFR 799.1054 and 40 CFR 799.5055. The submissions describe: (1) A two-generation reproduction study of 1,2,4,5-tetrachlorobenzene administered in the diet to Sprague-Dawley (CD) Rats (received by EPA on April 21, 1989) and (2) the determination of the hydrolysis potential of 1,2,4,5-tetrachlorobenzene as a function of pH (received by EPA on April 28, 1989). Fertility effects and chemical fate testing are required by this test rule.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completion of the submissions.

**II. Public Record**

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44530). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M Street SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: May 4, 1989.

**Joseph J. Merenda,**

*Director, Existing Chemical Assessment Division, Office of Toxic Substances.*

[FR Doc. 89-11825 Filed 5-16-89; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 17, 1989.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501 et seq.).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

*OMB Number:* 3060-0419.

*Title:* Sections 76.94, 76.155, 76.157, and 76.159—Syndicated Exclusivity and Network Non-duplication.

*Action:* Revision.

*Respondents:* Businesses (including small businesses).

*Frequency of Response:* On occasion.

*Estimated Annual Burden:* 1,460,025 responses; 176,663 hours; 0.121 hours each.

*Needs and Uses:* Notifications by television stations and program suppliers will provide cable systems with information on programs for which they have syndicated exclusivity or network non-duplication rights. The data provided to cable systems by television systems will be used to determine when programs subject to deletion will be aired, so that cable systems can delete carriage of signal at appropriate time.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89-11744 Filed 5-16-89; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and 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 protests or 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 and protests are found in §§ 560.7 and/or 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.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-010806-001

Title: Portland Terminal Agreement

Parties: Port of Portland (Port)
Stevedoring Services of America, Inc. (SSA)

Filing Party: Elaine Lycan, Manager, Price Estimating & Regulatory Affairs, P.O. Box 3529, Portland, Oregon 97208.

Synopsis: Agreement No. 224-010806-001 modifies the basic agreement to provide for revenue sharing of wharfage and dockage charges between the Port and SSA for receipts attributable to or generated by Hawaiian Marine Lines' barge operations at the Port.

By Order of the Federal Maritime Commission.

Dated: May 11, 1989.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89-11765 Filed 5-16-89; 8:45 am]

BILLING CODE 6730-01-M

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224-004182-001

*Title:* Port of Oakland Terminal Agreement

*Parties:* City of Oakland, Star Shipping A/S

*Synopsis:* The Agreement extends the term of the basic Agreement for the use of terminal facilities at the 7th Street Public Container Terminal to June 30, 1989.

By Order of the Federal Maritime Commission.

Dated: May 11, 1989.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89-11766 Filed 5-16-89; 8:45 am]

BILLING CODE 6730-01-M

### Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540): Showa Line, Ltd./Oceanic Cruise, Ltd., 188 Embarcadero, #480, San Francisco, CA 94105, Vessel: Oceanic Grace.

Date: May 11, 1989.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89-11772 Filed 5-16-89; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 89-12]

### Fleet Shipping Lines, Inc. v. New York Shipping Association, et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Fleet Shipping Lines, Inc. ("Complainant") against New York Shipping Association, et al. (see Attachment 1, hereinafter "Respondents") was served May 12, 1989. Complainant alleges that Respondents have violated certain sections of the Shipping Act, 1916, 46 U.S.C. app. 801 et seq., the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843 et seq., and the Shipping Act of 1984, 46 U.S.C. app. 1701 et seq., through implementation of the so-called 50-mile container rules at various East Coast and/or Gulf Coast ports.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by May 14, 1990, and the final decision of the Commission shall be issued by September 14, 1990.

**Joseph C. Polking,**

*Secretary.*

**Attachment 1—Respondents Named in Foregoing Complaint**

*A. Associations*

1. Boston Shipping Association, Inc., 101 Fargo Street, Boston, MA 02210.

2. Carriers' Container Council, 1 Evertrust Plaza, Jersey City, NJ 07302.

3. Council of North Atlantic Shipping Associations (CONASA), Suite 600, Lafayette Building, Philadelphia, PA 19106.

4. Mobile Steamship Association, Inc., P.O. Box 1077, Mobile, AL 36601.

5. New Orleans Steamship Association, Inc., 2240 World Trade Center, #2 Canal Street, New Orleans, LA 70130-1407.

6. New York Shipping Association, Inc. (NYSA), Two World Trade Center, 20th Floor, New York, NY 10048.

7. South Atlantic Employers Negotiating Committee, 2040 E. 21st Street, Jacksonville, FL 32206.

8. Southeast Florida Employers Port Association, P.O. Box 011693, Miami, FL 33101.

9. West Gulf Maritime Association, Suite 200, 1717 East Loop, Houston, TX 77029.

*B. Carriers*

1. ABC Containerline N.V., 38 East 29th Street, New York, NY 10016.

2. Afram Lines Ltd., 14802 Northdale Mabry, Tampa, FL 33624.

3. American Transport Line, 1820 Chapel Avenue, W. Cherry Hill, NJ 08002.

4. American President Lines, 1800 Harrison Street, Oakland, CA 94612.

5. Associated Container Transportation/PACE Lines, One World Trade Center, Suite 8101, New York, NY 10048.

6. Atlantic Container Line BV, 80 Pine Street, New York, NY 10005.

7. Atlantic Cargo Services, AB, P.O. Box 2531, 403 17 Gothenburg, Sweden.

8. Atlantik Express Line, c/o Norton Lilly Int., Inc., 200 Plaza Drive, Secaucus, NJ 07096.

9. Bank Line Ltd. Service, c/o Sea-Land Agencies International, 499 Thornall Street, 5th Floor, Edison, NJ 08837.

10. Barber Steamship Lines, Inc., 17 Battery Place, New York, NY 10004.

11. Bermuda Container Line, 1 Gateway Center, Suite 2408, Newark, NJ 07102.

12. Bermuda International Shipping Ltd., c/o Islandia, 19 Rector Street, Suite 2803, New York, NY 10006.

13. Bottacchi Line, 17 Battery Place, New York, NY 10004.

14. C.A. Venezolana de Navegacion, One World Trade Center, Suite 2073, New York, NY 10048.

15. Ceylon Shipping Corporation, One World Trade Center, Suite 3527, New York, NY 10048.

16. Chilean Line, 1 World Trade Center, Suite 3147, New York, NY 10048.

17. Columbus Line, Inc., Harborside Financial Center, Plaza 2, Jersey City, NJ 07302.

18. Compagnie Generale Maritime, Two World Trade Center, Suite 2164, New York, NY 10048.

19. Compagnie Maritime D'Affretement, No. 4, Quai B'Arenc, Marseille 13002, France.
20. Compagnie Nationale Algerienne de Naviation, 2, Quai D'Ajaccio, Algiers, Algeria.
21. Companhia Maritime Nacional, Avenida Rio Branco, 25–10. Andar, Rio de Janerio R.J., Brazil.
22. Compania Chilena de Navegacion Interoceanica, Plaza de la Justicia, No. 59, P.O. Box 1410, Valparaiso, Chile.
23. Concorde Line Central American Service, c/o Concorde Shipping Company, 929 Bienville Street, New Orleans, LA 70112.
24. Constellation Line, 233 Broadway, Suite 640, New York, NY 10279.
25. Continental Lines S.A., Klipperstraat 15, B–2030 Antwerp Belguim, Belguim.
26. Costa Container Lines, 26 Broadway, New York, NY 10004.
27. Crowley Caribbean Transport, Inc. (CTTC), 2801 N.W. 74th Avenue, Miamia, FL 33122.
28. D'Amico Societá di Navigazione Per Azioni, Corso Italia, 35/B, 00198 Rome, Italy.
29. Dart Containerline Company Limited (now (d/b/a Orient Overseas Container Line (U.K.), Ltd.), 5 World Trade Center, New York, NY 10048.
30. D.B. Turkish Cargo Lines, 93–95–97 Meclisi, Mebusan Caddesi, Istanbul, Turkey.
31. Dafra Line, 113 Rungsted Strandej, DK–2960 Runsted Kyst, Denmark.
32. Deppe Line, c/o Ecam Container Services, 1900 North Loop West, Suite 550, Houston, TX 77018.
33. Deutsche Afrika-Linien B.M.B.H. & Co., Palmaille 45 Postfach 50 03 69, 2 Hamburg 50, German Republic (West).
34. Ecuadorian Line, Inc., 19 Rector Street, New York, NY 10006.
35. Egyptian National Line, Alexandria Navigation (New York) Ltd., 50 Pine Street, New York, NY 10005.
36. Ellerman Lines PLC, 12–20 Camomile Street, London EC3A 7EX, Great Britain.
37. Empresa Lineas Maritimas Argentinas, S.A., Corrientes 389, Buenos Aires, Argentina.
38. Empresa Naviera Santa, S.A., Av. Jose Pardo No. 182, Lima, 18, Peru.
39. Euro-Gulf International, Inc., 80 Broad Street, Monrovia, Liberia.
40. Evergreen International (U.S.A.) Corporation, One Evertrust Plaza, Jersey City, NJ 07032.
41. Farrell Lines, Inc., One Whitehall Street, New York, NY 10004.
42. Forest Lines, Inc., One Whitehall Street, New York, NY 10004.
43. Frota Amazonica, S.A., Avenida Presidente Vargas 112, 66000 Belem (Para), Brazil.
44. Gran Golfo Express, 8355 Northwest 53rd Street, Suite 12, Miami, FL 33166.
45. Grancolombiana (New York), Inc., One World Trade Center, Suite 1667, New York, NY 10048.
46. Gulf Container Line (GCL), 5415 Oats Road, Houston, TX 77013.
47. Hapag-Lloyd (America), Inc., One Edgewater Plaza, Staten Island, NY 10305.
48. Hapag-Lloyd Aktiengesellschaft, Ballandamm 25, P.O. Box 102626, D2000 Hamburg 148.
49. Hoegh Lines, 1999 Harrison Street, Suite 930, Oakland, CA 94612.
50. Hoegh-Ugland Auto Liners A/S, Dronningensgate 40, 0154 Olso 1, Norway.
51. Hyundai Merchant Marine Co., Ltd., 19401 So. Main Street, Gardena, CA 90248.
52. Iceland Steamship Company, Ltd., 710 Wheat Building, East Main Street, Norfolk, VA 23514.
53. INCOTRANS, Wilhelminakade 39, P.O. Box 545, 3000 Am Rotterdam, Netherlands Antilles.
54. Intercontinental Transportation Services Ltd., P.O. Box 797, Hamilton, Bermuda.
55. Italian Line, c/o Containership Agency, Inc., 96 Morton Street, New York, NY 10014.
56. Ivaran Lines, One Exchange Plaza, New York, NY 10006.
57. Jugolinija Rijeka, One World Trade Center, Suite 2045, New York, NY 10048.
58. Jugoslavenska Oceanska Plovidba, Kotor, Yugoslavia.
59. Kawasaki Kisen Kaisha, Ltd., 2–9 Nishi-Shinbashi 1–Chome, Minato-Ku, Tokyo 105, Japan.
60. Lineas Agromar, S.A., Calle 40 No. 44—39 Piso 3, P.O. Box 3259, Barranquilla, Colombia.
61. Lloyd (Bermuda) Line Ltd., 19 Rector Street, Suite 1700, New York, NY 10006.
62. Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, LA 70130.
63. Maersk Line Agency, 221 Main Street, Suite 1450, San Francisco, CA 94105.
64. Mediterranean Shipping Co., c/o Containership Agency, Inc., 96 Morton Street, New York, NY 10014.
65. National Shipping Company of Saudia Arabia, c/o United States Navigation, Inc., 1 Edgewater Plaza, Staten Island, NY 10305.
66. Naviera Neptuno, S.A., Ave. Miraflores 895, Lima 18, Peru.
67. Nedlloyd Lines, Inc., Five World Trade Center, New York, NY 10048.
68. Neptune Orient Lines Ltd., 300 Montgomery Street, San Francisco, CA 94104.
69. Netumar Lines, 26 Broadway, New York, NY 10004.
70. Nexos Lines, Inc., 2011 Eastport Drive, Tampa, FL 33605.
71. NYK Line, 200 Plaza Drive, Secaucus, NJ 07096.
72. Nordana Line A/S, 113, Rungsted Strandvej, DK–2960 Rungsted Kyst, Denmark.
73. Ocean Star Container Line, c/o Intercon Shipping, Inc., Harborside Financial Center, Plaza 2, 8th Floor, Jersey City, NJ 07302.
74. P.T Djakarta Lloyd, 17 Battery Place, New York, NY 10004.
75. Pakistan National Shipping Corporation, c/o East Coast Overseas Corp., 21 West Street, New York, NY 10006.
76. Polish Ocean Lines/Gdynia America Line, Inc., 39 Broadway, 14th Floor, New York, NY 10006.
77. Rickmers Linie K.G., Beim Neuen Krahn 2, 2000 Hamburg 11, German Federal Republic (West).
78. Saf Bank, Inc. (SAF Bank Line), c/o Gulf and Atlantic Maritime Services, Inc., P.O. Box 4026, 99 Wood Avenue, So. Iselin, NJ 08830.
79. Samband Line, P.O. Box 180, 121 Reykjavik, Iceland.
80. ScanCarriers, Elevein 25 B, 1324 Lysaker, Norway.
81. Sea-Land Service, 10 Pasonage Road, Menlo Park, NY 08837.
82. Senator Linie Gmbh & Co. K.G., Martinistr 62–66, 2800 Bremen 1, German Federal Republic (West).
83. Shipping Corporation of India, Ltd., 229/232 Madame Cama Road, Bombay 400–021, India.
84. Shipping Corporation of Trinidad & Tobago, Inc., c/o Intercon Shipping, Inc., Harborside Financial Center, Plaza 2, 8th Floor, Jersey City, NJ 07032.
85. Spanish Line, c/o Tranatlantica Agency, Inc., 99 Hudson Street, New York, NY 10013.
86. South African Marine Corporation Limited, One Bankers' Trust Plaza, New York, NY 10006.
87. Sudan Shipping Line Ltd., P.O. Box 426, Port Sudan, Sudan.
88. Tecmarine Lines, Inc., P.O. Box 884, Cayman Islands, 33172.
89. Topgallant Group, Inc., West Lane, South Salem, NY 10590.
90. Torm Lines, Holmens Kanal 42 DK–1060, Copenhagen K, Denmark.
91. Trailer Marine Transport Corp., 9487 Regency Square Blvd., Jacksonville, FL 32211.
92. Trans Freight Lines, 90 West Street, New York, NY 10006.
93. Transportation Maritime Mexicana, S.A., Av. de la Cuspide No. 4755, Colonia Parqes Del Pedregal.

Mexico 14010 DF, Delegacion Ilalpan, Mexico.

94. Transportes Naviers Ecuatorianos, Ave. 9 de Octubre 416 Y Chile, Edificio Citibank, Guyaquil, Ecuador.

95. United Arab Shipping (S.A.G.), Two World Trade Center—99th Floor, New York, NY 10048.

96. Venezuelan Container Line, C.A., Avenida Universidad, Esquina El Chorro, Torro El Chorro, Piso 15, Caracas, Venezuela.

97. Waterman Steamship Corp., 120 Wall Street, New York, NY 10005.

98. Westwind Africa Line, P.O. Box 318, Apapa, Nigeria.

99. Yangming Marine Transport Line, c/o Solar International Shipping Agency, Inc. as General Agents for Yangming Line, Two World Trade Center, Suite 2260, New York, NY 10048.

100. Zim Container Service, One World Trade Center, Suite 2969, New York, NY 10048.

*C. Other Persons*

All other companies that were members of the following Respondent Associations, and all other ocean common carriers that subscribed to the Rules on Containers, during the period January 15, 1979 to the present:

1. Boston Shipping Association, Inc.
2. Carriers' Container Council
3. Council of North Atlantic Shipping Associations
4. Mobile Steamship Association, Inc.
5. New Orleans Steamship Association, Inc.
6. New York Shipping Association, Inc.
7. South Atlantic Employers Negotiating Committee
8. Southeast Florida Employers Port Association
9. West Gulf Maritime Association.

[FR Doc. 89-11779 Filed 5-16-89; 8:45 am]
BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### The Fuji Bank, Limited, Tokyo, Japan; Application To Provide Certain Financial Advisory Services

The Fuji Bank, Limited, Tokyo, Japan ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to acquire a general partnership interest in Fuji-Wolfensohn International, a *de novo* New York general partnership ("Company"), and thereby establish a joint venture with James D. Wolfensohn Incorporated, a Delaware corporation, and to engage through Company in the following activities:

(i) Acting as financial adviser, either on a retainer or success fee basis, to provide corporate finance advisory services to institutional customers, including advice with respect to structuring, financing, and negotiating domestic and international mergers, acquisitions, joint ventures, divestitures, leveraged buyouts, capital-raising vehicles, and other corporate transactions, and to provide ancillary services or functions incidental to the foregoing activities;

(ii) Performing feasibility studies for institutional customers, principally in the context of determining the financial attractiveness and feasibility of particular corporate transactions;

(iii) Providing valuation services in connection with the foregoing; and

(iv) Rendering fairness opinions in connection with corporate transactions.

Applicant contends that the Board has previously determined by Order that all of the activities listed above are permissible under the Act.[1]

Section 4(c)(8) of the Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined [by order of regulation] to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 **Federal Register** 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "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."

Interested persons are requested to express their views in writing on 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 interest, or unsound banking practices.

Applicant agrees to conduct its activities in accordance with certain limitations imposed by the Board in the Orders cited above, and accordingly makes the following commitments:

(a) Company's financial advisory activities will not encompass the performance of routine tasks or operations for a client on a daily or continuous basis;

(b) Disclosure will be made to each potential client of Company that Company is an affiliate of Applicant;

(c) Advice rendered by Company on an explicit fee basis will be without regard to correspondent balances maintained by a client of Company at Applicant or any of Applicant's depository subsidiaries;

(d) Company will not make available to Applicant or any of Applicant's subsidiaries confidential information received from Company's clients, except with the client's consent; and

(e) Applicant will implement procedures that will prevent and safeguard against tying products and services of Company with loans made by Applicant or any of Applicant's subsidiaries.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by

[1] *See The Nippon Credit Bank, Ltd.*, 75 Federal Reserve Bulletin 308 (February 13, 1989); *Scandinavia Bank Group plc*, 75 Federal Reserve Bulletin 311 (February 6, 1989); *Canadian Imperial Bank of Commerce*, 74 Federal Reserve Bulletin 571 (1988); *The Royal Bank of Canada*, 74 Federal Reserve Bulletin 334 (1988) *SunTrust Banks, Inc.*, 74 Federal Reserve Bulletin 256 (1988); *The Bank of Nova Scotia*, 74 Federal Reserve Bulletin 249 (1988); *Sovran Financial Corporation*, 73 Federal Reserve Bulletin 744 (1987); *Amsterdam-Rotterdam Bank N.V.*, 73 Federal Reserve Bulletin 726 (1987); *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987); *Security Pacific Corporation*, 71 Federal Reserve Bulletin 118 (1985).

the Board that the proposal meets or is likely to meet the standards of the Act.

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than June 16, 1989. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why 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.

This application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, May 11, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-11773 Filed 5-16-89; 8:45 am]

BILLING CODE 6210-01-M

## Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 31, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Hawkeye Bancorporation Employee Stock Ownership Plan*, Des Moines, Iowa; to acquire 4.43 percent of the voting shares of Hawkeye Bancorporation, Des Moines, Iowa, and thereby indirectly acquire Hawkeye-Ankeny Bank & Trust, Ankeny, Iowa; Citizens National Bank of Boone, Boone, Iowa; The United States Bank, Cedar Rapids, Iowa; Hawkeye Bank and Trust, N.A., Centerville, Iowa; Hawkeye Bank and Trust, Chariton, Iowa; First National Bank, Clinton, Iowa; State Bank and Trust, Council Bluff, Iowa; Hawkeye Bank & Trust of Des Moines, Des Moines, Iowa; Hawkeye Bank and Trust, Humboldt, Iowa; Liberty Bank & Trust, Lake Mills, Iowa; First National Bank in Lenox, Lenox, Iowa; Hawkeye Bank and Trust, Maquoketa, Iowa; Commercial State Bank, Marshalltown, Iowa; Hawkeye Bank & Trust, Mount Ayr, Iowa; Hawkeye Bank & Trust, Mt. Pleasant, Iowa; Jasper County Savings Bank, Newton, Iowa; Onawa State Bank, Onawa, Iowa; The Pella National Bank, Pella, Iowa; Lyon County State Bank, Rock Rapids, Iowa; The First National Bank of Sibley, Sibley, Iowa; Hawkeye Bank & Trust, Spencer, Iowa; Tipton State Bank, Tipton, Iowa; State Bank of Vinton, Vinton, Iowa; and The National Bank of Washington, Washington, Iowa.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Eugene H. Price*, Robinson, Illinois; to acquire an additional 2.9 percent of the voting shares of Crawford Bancorp, Inc., Robinson, Illinois, for a total of 12.5 percent, and thereby indirectly acquire Crawford County State Bank, Robinson, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Denton J. Weichman*, Ainsworth, Nebraska; to acquire an additional 94.74 percent of the voting shares of First Ainsworth Company, Ainsworth, Nebraska, for a total of 100 percent, and thereby indirectly acquire First National Bank of Ainsworth, Ainsworth, Nebraska.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Theodore E. Gildred*, Solana Beach, California; to acquire up to 20 percent of the voting shares of Torrey Pines Group, Solana Beach, California, and thereby indirectly acquire Torrey Pines Bank, Solana Beach, California.

Board of Governors of the Federal Reserve System, May 11, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-1174 Filed 5-6-89; 8:45 am]

BILLING CODE 6210-01-M

## Jefferson Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 8, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Jefferson Bankshares, Inc.*, Charlottesville, Virginia; to merge with Chesapeake Bank Corporation, Chesapeake, Virginia, and thereby indirectly acquire Chesapeake Bank & Trust, Chesapeake, Virginia, and thereby indirectly acquire American Bank, Newport News, Virginia.

2. *NB Corporation*, Charlottesville, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Chesapeake Bank & Trust, Chesapeake, Virginia, and thereby indirectly acquire American Bank, Newport News, Virginia

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *TCB Bancshares, Inc.*, Crawford, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Commercial Bank, Crawford, Georgia.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Colfax Bancshares, Inc.*, Colfax, Iowa; to become a bank holding company by acquiring 97.65 percent of the voting shares of First National Bank in Colfax, Colfax, Iowa.

Board of Governors of the Federal Reserve System, May 11, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-11775 Filed 5-16-89; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 89M-0135]**

### Sola/Barnes-Hind Premarket Approval of Barnes-Hind ® Enzyme + Surfactant Cleaner

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Sola/Barnes-Hind, Sunnyvale, CA, for premarket approval, under the Medical Device Amendments of 1976, of the BARNES-HIND ® Enzyme + Surfactant Cleaner. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 28, 1989, of the approval of the application.

**DATE:** Petitions for administrative review by June 16, 1989.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food And Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

**SUPPLEMENTARY INFORMATION:** On July 12, 1988, Sola/Barnes-Hind, Sunnyvale, CA 94086-5200, submitted to CDRH an application for premarket approval of the BARNES-HIND ® Enzyme + Surfactant Cleaner indicated for weekly or more frequent cleaning of soft (hydrophilic) and silicone acrylate rigid gas permeable contact lenses.

On October 20, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 28, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its aproval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

### Opportunity for Administrative review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 16, 1989, file with the Dockets Management Branch (**ADDRESS** above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 4, 1989.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 89-11780 Filed 5-16-89; 8:45 am]

BILLING CODE 4160-01-M

**[Docket No. 89M-0137]**

### Telectronics, Inc.; Premarket Approval of Meta MV™ Model 1202 Pulse Generator, etc.

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Telectronics, Inc., Englewood, CO, for premarket approval under the Medical Device Admendments of 1976, of the META MV™ Model 1202 Pulse Generator, Models 5600C and 5603C Programmer, Model 5302 External Telemetry Coil, Model 5702 Universal Printer, and Model 5500 Interface Module. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 7, 1989, of the approval of the application.

**DATE:** Petitions for administrative review by June 16, 1989.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Donald F. Dahms, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-3171.

**SUPPLEMENTARY INFORMATION:** On May 17, 1988, Telectronics Inc., Englewood, CO 80112, submitted to CDRH an application for premarket approval of the META MV™ Model 1202 Pulse Generator, Models 5600C and 5303 Programmer, Model 5302 External Telemetry Coil, Model 5702 Universal Printer, and Model 5500 Interface Module. The device is indicated for use as a cardiac pacing system.

On November 28, 1988, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommeneded approval of the application. On April 7, 1989, CDRH approved the application by a letter to

the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Donald F. Dahms (HFZ–450), address above.

**Opportunity for Administrative Review**

Section 515(d) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 16, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 4, 1989.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 89–11781 Filed 5–16–89; 8:45 am]

BILLING CODE 4160–01–M

## Advisory Committees; Meetings

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

*Meetings:* The following advisory committee meetings are announced:

**Fertility and Maternal Health Drugs Advisory Committee**

*Date, time, and place.* June 1 and 2, 1989, 9 a.m., Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD.

*Type of meeting and contact person.* Open public hearing, June 1, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open public hearing, June 2, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD–150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the control of fertility and women's health.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 22, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* On June 1, 1989, the committee will discuss the use of sex hormones for the prevention of post-partum breast engorgement and be briefed on FDA's current policies concerning the use of Accutane® by women of reproductive age. On June 2, 1989, the committee will discuss the use of bromocriptine for the prevention of post-partum breast engorgement and answer questions concerning the use of sex hormones and bromocriptine for this indication. (The committee will not be asked to respond to written questions concerning the use of Accutane®.)

Seating capacity is limited and seating for the public will be on a first-come-first-served basis.

**Oncologic Drugs Advisory Committee**

*Date, time, and place.* June 8 and 9, 1989, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

*Type of meeting and contact person.* Open committee discussion, June 8, 1989, 8:30 a.m. to 4:15 p.m.; open public hearing, 4:16 p.m. to 5:15 p.m., unless public participation does not last that long; open committee discussion, June 9, 1989, 8:30 a.m. to 12:30 p.m.; David F. Hersey, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of cancer.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 26, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* On June 8, 1989, the committee will discuss: (1) Approval requirements for drugs to treat metastatic breast cancer, and (2) new drug application (NDA) 19–926 Hexalen™ (hexamethylmelamine), U.S. Bioscience, for use in stages III and IV ovarian cancer. On June 9, 1989, the committee will discuss supplemental NDA 8–107 Leucovorin injection, Lederle Laboratories, for use in combination with fluorouracil for treatment of metastatic colorectal cancer.

**Peripheral and Central Nervous System Drugs Advisory Committee**

*Date, time, and place.* June 15 and 16, 1989, 9 a.m., Conference Rms. D and E,

Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

*Type of meeting and contact person.* Open symposium, June 15, 1989, 9 a.m. to 3:30 p.m.; open public hearing, 3:30 p.m. to 4:30 p.m., unless public participation does not last that long; open symposium, June 16, 1989, 9 a.m. to 3:30 p.m., open public hearing, 3:30 p.m. to 4:30 p.m., unless public participation does not last that long; Frederick J. Abramek, Center for Drug Evaluation and Research (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4020.

*General function of the committee.* The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drugs for use in the treatment of neurological disease.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 1, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open symposium.* The symposium will be held as a special session of the committee and is intended to provide prospective developers of commercial drug products with a comprehensive overview of expert opinion on a wide assortment of issues affecting the assessment of putative pharmacological treatments of dementia.

**Endocrinologic and Metabolic Drugs Advisory Committee**

*Date, time, and place.* June 29, 1989, 9 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

*Type of meeting and contact person.* Open public hearing, June 29, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; John R. Short, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drug products for use in endocrine and metabolic disorders.

*Agenda—Open public hearing.* Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

*Open committee discussion.* The committee will discuss the safety and effectiveness of fenofibrate as a lipid-altering drug.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 12, 1989.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 89–11839 Filed 5–12–89; 3:06 pm]

BILLING CODE 4160–01–M

## Health Resources and Services Administration

### Advisory Council; Establishment

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463 (5 U.S.C. Appendix II), the Health Resources and Service Administration (HRSA) announces the establishment of the following advisory committees.

*Designation:* Department Review Committee.

*Purpose:* Provides advise to the Director, Bureau of Health Professions, on the technical merit of family medicine graduate training grant applications.

The Committee reviews applications that (1) either assist in meeting the cost of planning, developing and operating; or participating in approved predoctoral training programs in the field of family medicine; and (2) assist in meeting the cost of establishing, maintaining, or improving academic administrative

units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine.

*Structure:* Consists of the 20 members who are not officers or regular full-time employees of the Federal Government. Members are appointed by the Administrator, HRSA, from appropriately qualified persons in clinical practice, teaching, research, and administration to provide board coverage in the field of family medicine.

* * * * *

*Designation:* Faculty Development Review Committee.

*Purpose:* Provides advise to the Director, Bureau of Health Professions, on the technical merit of faculty development in family medicine and in general internal medicine and/or general prediatrics grant applications.

The Committee reviews applications to provide: (1) Assistance in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs and assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in family medicine training programs; and (2) assistance in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in general internal medicine or general prediatrics training programs and assistance for direct support in the form of traineeships and fellowships to physicians in training.

*Structure:* Consists of the 15 members who are not officers or regular full-time employees of the Federal Government. Members are appointed by the Administrator, HRSA, from appropriately qualified persons in clinical practice, teaching, research, and administration to provide board coverage in the field of family medicine and general internal medicine and/or general pediatrics.

* * * * *

*Designation:* Residency Training Review Committee.

*Purpose:* Provides advise to the Director, Bureau of Health Professions, on the technical merit of residency training in general internal Medicine and/or general pediatrics grants applications.

The Committee reviews applications that plan, develop and operate approved residency training programs in internal medicine or pediatrics, which emphasize the training of residents for the practice of general internal medicine or general pediatrics and assist residents, through traineeships and fellowships, who are participants in any such program and who plan to specialize or work in the practice of general internal medicine or general pediatrics.

*Structure:* Consists of the 20 members who are not officers or regular full-time employees of the Federal Government. Members are appointed by the Administrator, HRSA, for appropriately qualified persons in clinical practice, teaching, research, and administration to provide broad coverage in the field of general internal medicine or general pediatrics.

Authority for these Committees will terminate in two years unless the Administrator, HRSA formally determines that continuance is in the public interest.

Dated: May 11, 1989.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 89-11735 Filed 5-16-89; 8:45 am]

BILLING CODE 4160-15-M

## National Institutes of Health

### National Heart, Lung, and Blood Institute; Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, June 16, 1989. The meeting will be held at the National Institutes of Health, 7550 Wisconsin Avenue, Federal Building, Conference Room B1-19, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to 5 p.m. to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, Bethesda, Maryland 20982, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 10, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 89-11803 Filed 5-16-89; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[UT-942-09-4214-12; UO-015519]**

### Classification Termination and Opening Order, Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Correction.

**SUMMARY:** This notice corrects the Classification Termination and Opening Order previously published in the May 4, 1989, (Vol. 54, No. 85 FR 19245) **Federal Register.** The Notice is corrected by changing the legal description to read:

Salt Lake Meridian

T. 36 S., R. 16 E.,
Sec. 28, N½NW¼NW¼NE¼.

The area described contains 5 acres located in San Juan County.

**Ted D. Stephenson,**

*Chief, Branch of Land and Mineral Operations.*

[FR Doc. 89-11776 Filed 5-16-89; 8:45 am]

BILLING CODE 4310-DQ-M

**[CA-026-09-4050-90]**

### Emergency Closure of Public Lands; California

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Emergency Closure of Public Lands to Motorized Vehicle Use and Establishment of Recreation Trail Use Supplementary Rules: Bizz Johnson Trail Special Recreation Management Area, Lassen County, California.

**SUMMARY:** In accordance with Title 43, Code of Federal Regulations Part 8364.1, notice is hereby given that all portions of the Bizz Johnson Trail Special Recreation Management Area (SRMA) administered by the Bureau of Land Management are closed to all motorized vehicle use, except for emergency vehicles, fire suppression and rescue vehicles, BLM operation and maintenance vehicles and other motorized vehicles on official business specifically approved by an authorized

officer of the Bureau of Land Management.

This closure affects all of the public lands in the Bizz Johnson Trail SRMA including the entire Bizz Johnson Trail located within the following areas of Lassen County, California:

T.29N., R.10E., M.D.M.,
Sec. 1; Fee Easement to U.S. within the N½ and the N½SE¼.
T.29N., R.11E., M.D.M.,
Sec. 2; Lots 2, 3 and 4, S½NW¼;
Sec. 3; Lots 1, 2, 3 and 4, S½N½, N½SW¼, NW¼SE¼;
Sec. 4; Lots 1, 6, 7, 8 and 9, S½NE¼, SE¼NW¼, SW¼, N½SE¼;
Sec. 5; Portions of SE¼NW¼ and NW¼SW¼ lying south and east of State Hwy 36; U.S. fee easements within S½NE¼ and NE¼SW¼; S½SW¼; SE¼;
Sec. 6; Portions of the S½SE¼ and the SW¼, including fee easements to the U.S.
T.30N., R.11E., M.D.M.,
Sec. 34; S½S½SE¼;
Sec. 35; SE¼SW¼, N½SE¼, SW¼SE¼;
Sec. 36; Portions of the S½N½ and the N½SW¼, including fee easements to the U.S.
T.30N., R.12E., M.D.M.,
Sec. 31; Portions of Lots 1 and 2, all of Lots 3, 4, 5, 6, 7, 8, 9 and 10, and fee easements within the E½ and Lot 2.

Certain roads and other areas specifically excepted from this closure are described in the following supplemental rules. This closure is subject to valid existing rights.

In accordance with 43 CFR 8365.1–6, the following supplementary rules are hereby established for the Bizz Johnson Trail Special Recreation Management Area:

1. Motorized vehicle use at the trailhead areas of the Bizz Johnson Trail is hereby limited to constructed and/or BLM maintained access roads and parking areas as shown on BLM maps at the trailhead kiosks or available from the BLM Eagle Lake Resource Area, 2545 Riverside Drive, Susanville, CA 96130.

2. Motorized vehicle use of hill climbs and other motor vehicle access routes within the Hobo Camp Trailhead other than the routes designated in paragraph #1 above is prohibited.

3. All motor vehicle operations must be on authorized routes in accordance with State law governing vehicle licensing and operation on public roads and be within posted speed limits.

4. Motorized vehicle use is prohibited within the waters or the channel of the Susan River and is also prohibited within the Department of Housing and Urban Development's designated flood plain of the Susan River, except where specifically approved by the Bureau of Land Management's authorized officer as shown on BLM maps at the trailhead kiosks or available at the Eagle Lake Resource Area office.

5. Motorized vehicle use is allowed on the existing road along the south side of the Susan River (known as "South Side Road") on public land between the Hobo Camp Trailhead and the line dividing the N½ and S½, SE¼ of section 35, T.30N., R.11E., M.D.M. Motorized vehicle use is allowed on the segment of old State Highway 36 within the SE¼NW¼ of Section 5 and on the existing logging road within the N½N½ of Lot 4 of section 3 in T.29N., R.11E., M.D.M. Motorized vehicle use is also allowed on and southeasterly of the existing U.S. Forest Service Road number 30N03 in the SE¼SW¼ of section 6, T.29N., R.11E., M.D.M. The above roads that are open to motorized vehicle use are shown on BLM maps at the trailroad kiosks or available at the Eagle Lake Resource Area Office.

6. Firearms discharge is prohibited on, across or within 300 feet of the Bizz Johnson Trail and any other designated trails within the Bizz Johnson Trail Special Recreation Management Area. Firearms discharge is prohibited within ¼-mile of all trailheads of the SRMA.

7. Public use of the SRMA trailheads and of South Side Road within the Susan River Canyon is limited to day use only. Over night camping is prohibited at the South Lassen Street, Miller Road, Hobo Camp and Devil's Corral Trailheads. Public use of the Hobo Camp trailhead is allowed only from 7:00 a.m. to 9:00 p.m. daily. Any trailhead may be closed by the authorized officer because of seasonal wet weather, soil saturation, vandalism or high fire danger.

8. Overnight camping along the Bizz Johnson Trail is allowed on public land at least ¼-mile outside of the trailhead areas, for up to 7 days per trail segment. Trail segments are located between Susanville, Devil's Corral, Goumaz, Westwood Junction and Mason Station.

9. Campfires are allowed in designated fire safe areas along the trail or on existing natural bare mineral soil areas within the Susan River flood plain where 10 feet or more of clearance exists between the campfire area and adjacent vegetation. Persons using campfires are required to have a campfire permit issued by the Bureau of Land Management, the U.S. Forest Service or the California Department of Forestry. All campfires are subject to seasonal fire restrictions.

10. Operation of audio devices within the Bizz Johnson Trail Special Recreation Management Area, including all trailheads, will be allowed provided such operation does not create unreasonable noise that disturbs others.

**SUPPLEMENTARY INFORMATION:** This closure is in keeping with the land use planning for the area as developed in the Susanville-Westwood Trail Management Plan, signed by Susanville BLM District Manager in August 1983. The Susanville-Westwood Trail was renamed the Bizz Johnson Trail in 1983 by act of Congress.

A formal closure notice has not been published for this area because the closure action for the trail was to have been included in the off-road vehicle designations for the entire Eagle Lake Resource Area. The designations for the entire Eagle Lake Resource Area are not yet completed. emergency motorized vehicle closure of the Bizz Johnson Trail however is needed immediately because illegal trespass vehicle use on the Bizz Johnson Trail is resulting in conflicts with nonmotorized trail users, and in vehicle associated vandalism of trail facilities.

Motorized vehicle use is in direct conflict with the management goal of the trail. Such use has also lead to vehicle related vandalism of four safety closure gates on the trail's two raiload tunnels. Vehicle based vandalism has occurred and has resulted in an increased hazard to the public through the illegal and reckless reopening of the tunnels by motorized vehicle abuse.

The authority for this closure and rule making is 43 CFR 8341.2 and 43 CFR 8365.1–6. Any person who fails to comply with a closure order or rulemaking is subject to arrest and fines of up to $1,000 and/or imprisonment not to exceed 12 months.

**DATES:** This closure action and supplementary rulemaking goes into effect May 26, 1989, and will remain in effect until the Authorized Officer determines it is no longer needed.

**FOR FURTHER INFORMATION CONTACT:** Richard H. Stark, Jr., Area Manager, Eagle Lake Resource Area, 2545 Riverside Drive, Susanville, CA 96130 Telephone (916) 257–0456.

**Richard H. Stark, Jr.,**
*Area Manager.*

[FR Doc. 89–11789 Filed 5–16–89; 8:45 am]
BILLING CODE 4310–40–M

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**[WY–040–09–4300–90]**

## Title of District Advisory Meeting To Be Held in Kemmerer, WY; Correction

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of correction of title of district advisory meeting.

**SUMMARY:** The notice corrects the title of the District Advisory Meeting previously published in the Federal Register on April 20, 1989, (Vol. 54, No. 75, page 16003) to be held in Kemmerer, Wyoming, on May 17 and 18, 1989. The title of the meeting is District Advisory Council.

The dates, times, and location for the meeting remain unchanged: May 17, 1989, 9 a.m. until 4 p.m. and May 18, 1989, 9 a.m. until 12 p.m. at the Lincoln County Public Libary Community Room, 519 Emerald Street, Kemmerer, WY 83101.

**Donald H. Sweep,**

*District Manager.*

[FR Doc. 89-11790 Filed 5-16-89; 8:45 am]

BILLING CODE 4310-22-M

## Louisiana; Recordable Disclaimer of Interest

Notice is hereby given that the United States of America, pursuant to the provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745, intends to disclaim and release all interest to the owner of record for the following property to-wit: Sections 41 and 42, T. 1 N., R. 8 E., Concordia Parish, Louisiana and Sections 1, 2, 3, 4, 10, 11, 12 and 18, T. 1 N., R. 9 E., Concordia Parish, Louisiana.

Any person wishing to submit a protest of comments on the above disclaimer should do so in writing within 90 days of the publication date of this notice. If no protest(s) is received, the disclaimer will be effective shortly after the 90 day period.

The purpose of this notice is to afford any person or persons having a valid protest to the above action an opportunity to submit such protest to the Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, telephone (703) 461-1400 on or before expiration of the 90 day period.

**G. Curtis Jones, Jr.,**

*State Director.*

[FR Doc. 89-11793 Filed 5-16-89; 8:45 am]

BILLING CODE 4310-GJ-M

## Minerals Management Service

## Development Operations Coordination Document

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Ashland Exploration, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5414, Block 116, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on May 8, 1989. Comments must be received on or before June 1, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resource Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives or affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 8, 1989.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 89-11792 Filed 5-16-89; 8:45 am]

BILLING CODE 4310-MR-M

## Publication of Revised Outer Continental Shelf Official Protraction Diagram

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Publication of Revised Outer Continental Shelf Official Protraction Diagram.

**SUMMARY:** Notice is hereby given that effective with this publication, the following OCS Official Protraction Diagram, last revised on December 13, 1988, is on file and available for information only, in the Gulf of Mexico OCS Regional Office, New Orleans, Louisiana. In accordance with Title 43, Code of Federal Regulations, this Official Protraction Diagram is the basic record for the description of mineral and oil and gas lease sales in the geographic area it represents.

| Description | Revision | Latest revision date |
|---|---|---|
| Pensacola, NH, 16-5. | 8(g) Zone | Dec. 13, 1988. |

**ADDRESSES:** Copies of this Official Protraction Diagram may be purchased for $2.00 each from Public Information Unit (OPS-3-4), Minerals Management Service, Gulf of Mexico OCS Regional Office, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, (504) 736-2519.

Technical comments or questions pertaining to this map should be directed to Office of Leasing and Environment, Supervisor, Sales and Support Unit, (504) 736-2761.

Date: May 8, 1989

**J. Rogers Pearcy,**

*Regional Director, Minerals Management Service, Gulf of Mexico OCS Region.*

[FR. Doc. 89-11791 Filed 5-16-89; 8:45 am]

BILLING CODE 4310-MR-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31367]

### Logansport & Eel River Short-Line Co., Inc.—Exemption From 49 U.S.C. Subtitle IV

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission exempts under 49 U.S.C. 10505 from all of the provisions of 49 U.S.C. Subtitle IV the operation by Logansport & Eel River Short-Line Co., Inc. (Logansport) of approximately 2.2 miles of rail line at Logansport, IN. A related notice of exemption was filed by Logansport under 49 CFR 1150.31 for acquisition and operation of the line, in Finance Docket No. 31366 on January 6, 1989. That transaction was consummated on or about January 31, 1989.

**DATES:** Petitions for reconsideration must be filed by June 9, 1989. Petitions for stay must be filed by May 30, 1989.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 31367 to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
and

Petitioner's representative: James M. Prickett, Beers, Mallers, Backs, Salin & Larmore, 1100 Fort Wayne National Bank Building, Fort Wayne, IN 46802.

**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) 289–4537/4539. [Assistance for the hearing impaired is available through TDD services (202) 275–1721].

Decided: May 1, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Phillips commented with a separate expression. Vice Chairman Simmons and Commissioner Lamboley dissented with separate expressions.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89–11816 Filed 5–16–89; 8:45 am]

BILLING CODE 7035–01–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89–38)]

### National Environmental Policy Act; Availability of the Record of Decision for the Advanced Solid Rocket Motor Program

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of availability of the record of decision.

**SUMMARY:** The Record of Decision (ROD) for the Advanced Solid Rocket Motor (ASRM) Program was signed by the Associate Administrator for Space Flight on April 17, 1989. The ROD documents the decision to select the Yellow Creek site in Tishomingo County, Mississippi, for manufacturing; the John C. Stennis Space Center in Hancock County, Mississippi, for static test firings of the ASRM; the Michoud Assembly Facility in Orleans Parish, Louisiana, for ancillary manufacturing activities; and the Kennedy Space Center, Florida, for launch operations. The ASRM will be a multi-segmented design with the motor containing approximately 1.2 million pounds of high performance hydroxyl terminated polybutadiene (HTPB) propellant with solids contents of 86–88 percent.

The decision took effect on April 17, 1989, and was made with full consideration of the comments and concerns received.

Copies of the ROD have been furnished to the Council on Environmental Quality; the Tennessee Valley Authority; the U.S. Army Corps of Engineers; the Environmental Protection Agency; the Departments of Agriculture, Air Force, Army, Commerce, Defense, Health and Human Services, Interior, and Transportation; to appropriate State and local agencies; and to numerous private organizations.

Future notices of decisions at the end of the notice period of any final EIS will be indicated as part of the notice of that EIS.

Copies of the ROD may be examined at any of the following locations:

(a) NASA Headquarters Information Center, National Aeronautics and Space Administration, Washington, DC 20546.

(b) NASA Information Center, Ames Research Center, Moffett Field, CA 94035.

(c) NASA Information Center, Dryden Flight Research Facility, P.O. Box 273, Edwards, CA 93523.

(d) NASA Information Center, Goddard Space Flight Center, Greenbelt, MD 20771.

(e) NASA Information Center, Johnson Space Center, Houston, TX 77058.

(f) NASA Information Center, Kennedy Space Center, FL 32899.

(g) NASA Information Center, Langley Research Center, Hampton, VA 23665.

(h) NASA Information Center, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135.

(i) NASA Information Center, Marshall Space Flight Center, Huntsville, AL 38512.

(j) NASA Information Center, Stennis Space Center, Bay St. Louis, MS 39520.

(k) NASA Information Center, (Jet Propulsion Laboratory), NASA Resident Office, 4800 Oak Drive, Pasadena, CA 91109.

(l) NASA Information Center, Wallops Flight Facility, Wallops Island, VA 23337.

May 11, 1989.

**C. Howard Robins, Jr.,**

*Associate Administrator for Management.*

[FR Doc. 89–11830 Filed 5–16–89; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### International Exhibitions Federal Advisory Committee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions will be held on June 5, 1989, from 9:00 a.m.–5:00 p.m. in Room M–14 of the Nancy Hanks Center, 1000 Pennsylvania Avneue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will include the future role of the committee and guidelines.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

May 10, 1989.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 89–11794 Filed 5–16–89; 8:45 a.m.]

BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-498]

### Houston Lighting & Power Co.; City Public Service Board of San Antonio; Central Power and Light Co.; City of Austin, TX; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 8 to Operating License No. NPF-76 issued to Houston Lighting & Power Company which consisted of changes to the Final Safety Analysis Report and plant modifications related to the operation of the South Texas Project, Unit 1 located in Matagorda County, Texas.

The amendment is effective as of the date of issuance.

The amendment modified the Engineered Safety Feature Actuation System (ESFAS) logic such that failure of the control room/electrical auxiliary building ventilation radiation monitors, spent fuel pool radiation monitors and reactor containment building purge radiation monitors will be annunciated in the control room and only a high radiation signal would cause a heating, ventilation, and air conditioning (HVAC) Engineered Safety Feature (ESF) actuation.

The application of the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 12, 1988 (53 FR 35244). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated February 24, 1988, (2) Amendment No. 8 to License No. NPF-76, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701. 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 8th day of May 1989.

For the Nuclear Regulatory Commission.

**George F. Dick, Jr.,**

*Project Manager, Project Directorate—IV, Division of Reactor Projects III, IV, V and Special Projects Office of Nuclear Regulation.*

[FR Doc. 89-11805 Filed 5-16-89; 8:45 am]

BILLING CODE 7590-01-M

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### Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published April 20, 1989 (54 FR 16027). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACNW Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the June 1989 ACRS full Committee and the ACNW meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/ 492-7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

#### ACRS Subcommittee Meetings

*Joint Thermal Hydraulic Phenomena and Core Performance*, May 23, 1989, Bethesda, MD. The Subcommittees will discuss: (1) The NRC-RES thermal hydraulic research program plan as documents in both NUREG-1252, and a proposed SECY paper, and (2) the status of the ongoing effort to address the implications of the core power oscillation event at LaSalle Unit 2.

*Regulatory Policies and Practices*, May 24, 1989—Postponed.

*Auxiliary and Secondary Systems*, May 24, 1989, Bethesda, MD. The Subcommittee will discuss the proposed Generic Letter on Service Water System Problems Affecting Safety-Related Equipment, Biofouling problems at nuclear power plants, and other related matters.

*AC/DC Power Systems Reliability*, June 7, 1989 (a.m.), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 128, "Electrical Power Reliability."

*Human Factors*, June 7, 1989 (p.m.), Bethesda, MD. The Subcommittee will be briefed by RES staff on a Chernobyl spin off study on the nature, frequency and severity of procedural violations at U.S. nuclear plants.

*Materials and Metallurgy*, June 20, 1989, Bethesda, MD. The Subcommittee will review low upper shelf fracture energy concerns of reactor pressure vessels.

*Mechanical Components*, June 21 1989, Bethesda, MD. The Subcommittee will review and discuss: (1) Bechtel/ KWU Alliance Program on MOV operability, (2) concerns on the reliability of check valves, and (3) other related matters.

*Reliability Assurance*, June 22, 1989, Bethesda, MD. The Subcommittee will discuss the status of implementation of the resolution of USI A-46, "Seismic Qualification of Equipment in Operating Plants," and other related matters.

*Extreme External Phenomena*, June 23, 1989 (tentative), Bethesda, MD. The Subcommittee will review GI-40, "Seismic Design Criteria."

*Generic Items*, July 12, 1989, Bethesda, MD. The Subcommittee will discuss the Multiple Systems Response Program (MSRP).

*Joint Regulatory Activities and Containment Systems*, August 9, 1989, Bethesda, MD. The Subcommittee will review the proposed final revision to Appendix J to 10 CFR Part 50, "Primary

Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

*Thermal Hydraulic Phenomena,* Date to be determined (June), Bethesda, MD. The Subcommittee will review the proposed experimental program to investigate specific thermal hydraulic phenomena of the B&W OTSG.

*Advanced Pressurized Water Reactors,* Date to be determined (June/July), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

*Auxiliary and Secondary Systems,* Date to be determined (June/July), Bethesda, MD. The Subcommittee will review the adequacy of the staff's proposed plans to implement the recommendations resulting from the Fire Risk Scoping Study and other matters related to fire protection systems.

*B&W Reactor Plants (Rancho Seco),* Date to be determined (late June/early July), Sacramento, CA. The Subcommittee will discuss the lessons learned from the approximately 2-year shutdown of Rancho Seco.

*Thermal Hydraulic Phenomena,* Date to be determined (July), Bethesda, MD. The Subcommittee will review the NRC staff's proposed resolution of Generic Issue 84, "CE PORVs."

*Plant Operating Procedures,* Date to be determined (July), Bethesda, MD. The Subcommittee will review the status of the NRC program on Technical Specification Improvement.

*Advanced Pressurized Water Reactors,* Date to be determined (July/August), Bethesda, MD. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

*Severe Accidents,* Date to be determined (July/August), Bethesda, MD. The Subcommittee will discuss the NRC Severe Accident Research Program (SARP) plan.

*Severe Accidents,* Date to be determined (July/August), Bethesda, MD. The Subcommittee will discuss the NUMARC Accident Management guideline document and the NRC research program in the accident management area.

*Joint Severe Accidents and Probabilistic Risk Assessment,* Date to be determined (July/August). Location to be determined. The Subcommittees will discuss the second draft of NUREG-1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants."

*Decay Heat Removal Systems,* Date to be determined (July/August), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

*Joint Containment Systems and Structural Engineering,* Date to be determined (July/August), San Francisco, CA area. The Subcommittees will discuss containment design criteria for future plants with invited speakers from industry.

*Regulatory Policies and Practices,* Date to be determined (July/August), Bethesda, MD. The Subcommittee will review a proposed rule on nuclear plant license renewal.

*Joint Thermal Hydraulic Phenomena and Core Performance,* Date to be determined (September), Bethesda, MD. The Subcommittees will continue their review of the implications of the core power oscillation event at LaSalle, Unit 2.

*Decay Heat Removal Systems,* Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

*Thermal Hydraulic Phenomena,* Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry best-estimate ECCs model submittals for use with the revised ECCS Rule.

*Auxiliary and Secondary Systems,* Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

*Extreme External Phenomena,* Date to be determined, Bethesda, MD. The Subcommittee will review planning documents on external events.

**ACRS Full Committee Meetings**

350th ACRS Meeting, June 8–10, 1989—Items are tentatively scheduled.

*A. *Implementation of ATWS Rule (Open)*—Discuss proposed ACRS report to the NRC regarding the status of the implementation of the NRC rule on Anticipated Transients Without Scram.

*B. *Scope of ACRS Responsibilities (Open)*—Discuss the scope of ACRS responsibilities and related allocation of resources.

*C. *Education Requirements for Senior Operators and Supervisors at Nuclear Power Plants (Open)*—Review and report on proposed NRC rules (10 CFR 50 and 55) on Education Requirements for Senior Operators and Supervisors at Nuclear Power Plants.

*D. *Thermal Hydraulic Research Program Plan (Open)*—Review and report on the status and plans of the NRC research program related to thermal hydraulic research as detailed in NUREG-1252 and a proposed SECY paper to the Commission.

*E. *USI A-47, Safety Implications of Control Systems (Open)*—Review and report on proposed final resolution of this unresolved safety issue.

*F. *BWR Thermal Hydraulic Instability (Open)*—Review and report regarding the status of work related to BWR thermal hydraulic instability as evidenced by the core power oscillation event which occurred at the LaSalle nuclear power plant.

*G. *USI A-17, Systems Interactions (Open)*—Discuss and plan further ACRS action on the proposed final resolution of this unresolved safety issue.

*H. *Performance Indicator Program (Open)*—Briefing by NRC staff regarding the development and implementation of new performance indicators for operating nuclear power plants.

*I. *Service Water Systems (Open)*—Review and comment on the proposed generic letter regarding the impact of service water systems failures and degradations on safety-related equipment.

*J. *Containment Performance Improvements (Open)*—Briefing regarding the status of the containment performance improvement program.

*K. *GE Advanced Boiling-Water Reactor (Open-Closed)*—Preliminary session to begin review of this improved standardized boiling-water reactor for a preconstruction authorization.

*L. *Future activities (Open)*—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

*M. *ACRS Subcommittee Activities (Open)*—Hear and discuss the status of assigned activities related to designated areas of responsibility, including International Conference an Quality in the Nuclear Power Industry.

*N. *GI-128, Electrical Power Reliability (Open)*—Review and report on proposed resolution of this generic issue.

351st ACRS Meeting, July 13–15, 1989—Agenda to be announced.

352nd ACRS Meeting, August 10–12, 1989—Agenda to be announced.

**ACNW Full Committee Meetings**

11th ACNW Meeting, June 13, 1989. The Committee will continue its review of the NRC staff's draft of the Site Characterization Analysis (SCA).

12th ACNW Meeting, June 28–30, 1989—Agenda to be announced.

13th ACNW Meeting, July 26–27, 1989—Agenda to be announced.

Date: May 11, 1989.
John C. Hoyle,
*Advisory Committee Management Officer.*
[FR Doc. 89-11756 Filed 5-16-89; 8:45 am]
BILLING CODE 7590-01-M

## Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 22, 1989, through May 5, 1989. The last biweekly notice was published on May 3, 1989 (54 FR 19843).

### NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the 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 June 16, 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 Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the

Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 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.

**Arkansas Power & Light Company, Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas**

*Date of amendment requests:* April 24, 1989

*Description of amendment request:* The proposed amendments would revise the Technical Specifications for each unit to reflect planned changes in Arkansas Power & Light Company's (AP&L's) organization for Arkansas Nuclear One (ANO). The proposed amendments include both title changes and organizational restructuring. Also included are corresponding changes in the designated members of the Plant Safety Committee. The specific changes proposed are: (1) The position of Executive Director, Nuclear Operations is deleted, and this position's duties and responsibilities are divided between the corporate Vice President, Nuclear (formerly the Vice President, Nuclear Operations), and the Director, Nuclear Operations (a new position); (2) The Vice President, Nuclear will have the following managers reporting to him directly: Director, Nuclear Operations; General Manager, Engineering (formerly General Manager, Design Engineering); General Manager, Technical Support and Assessment (formerly General Manager, Plant Support); General Manager, Nuclear Quality (unchanged); and General Manager, Nuclear Support (a new title); (3) The Director, Nuclear Operations will be the onsite manager responsible for those activities necessary for safe operation and maintenance of the units. The following managers will report directly to the Director, Nuclear Operations: Unit 1 Plant Manager; Unit 2 Plant Manager; Manager Central Operations; Manager, Nuclear Standards; and Manager, Work Control. Each Unit Plant Manager will be responsible for separate operations, maintenance, and maintenance engineering organizations dedicated to each unit. The Manager, Central Operations (new position) will be responsible for radiation protection, chemistry, providing support services to both units, and outage planning. The Manager, Nuclear Standards (new position) will be responsible for maintaining procedures and administrative controls for both units. The Manager, Work Control will be responsible for the functioning of the work control center in support of maintenance, modification, and outage activities; (4) The General Manager, Engineering will be responsible for design engineering, the onsite engineering organization, plant modifications, and activities associated with design and configuration control of the units, and providing engineering support as needed to operations, maintenance, licensing, and plant assessment; (5) The General Manager, Technical Support and Assessment will be responsible for Licensing, physical security, ANO training, procurement, operational events assessment, plant projects activities, nonconformance report processing, and the functioning of the Plant Safety Committee; (6) The General Manager, Nuclear Support will be responsible for the financial, administrative, and support staffs formerly under direct control of the Vice President, Nuclear; and (7) The duties and responsibilities of the General Manager, Nuclear Quality are unchanged.

The duties and responsibilities of the Plant Safety Committee (PSC) are unchanged. However due to the extensive restructuring and numerous position title changes, the composition description of the PSC membership is changed. The Manager, Nuclear Standards is designated as the PSC Chairman (formerly designated as General Manager, Plant Support). Changes in positions or titles of positions designated as voting members of the PSC are both Unit Plant Managers (formerly the Operations Manager), a designated radiation protection manager (formerly the Health Physics Superintendent), the Manager, Plant Engineering (formerly the Engineering Manager), and Superintendent, Operations Assessment (new member). The other positions designated as voting PSC members are unchanged. These are the Superintendents of Reactor Engineering and Quality Assurance, the Training Manager, and for Unit 2, a Nuclear Softwear Expert. The Plant Licensing Supervisor position is deleted from the PSC. The total number of persons on the PSC is unchanged at 9 members. Also, the requirements regarding quorum and meeting frequency are unchanged.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7744). One of the examples (i) of these actions involving no significant hazards consideration relates to a purely administrative change to Technical Specifications. The proposed changes to the Technical Specifications for Arkansas Nuclear One, Units 1 and 2 are associated with a planned licensee reorganization. Although personnel assignments are revised, and position titles and reporting requirements are changed, the commitments to certain minimum qualifications and organizational reporting requirements are unchanged. The planned organizational restructuring is designed to improve accountability, promote more efficient operation, and result in an overall improvement in safety at ANO. The designation of the Manager, Nuclear Standards as the PSC Chairman is appropriate because he is responsible for establishing and maintaining quality in plant operational and administrative procedures. A significant function of the

PSC is the review of procedures that affect nuclear safety. The designation of the Operations Assessment Superintendent as a PSC member is also appropriate because of the PSC responsibility to review reportable events. These proposed changes are administrative in nature and do not decrease the level of management controls presently in the Technical Specifications, and therefore, involve no significant hazards. The changes requested do not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of accident or condition over previous evaluations; or involve a significant reduction in a margin of safety. Based on this information, the staff proposes to determine that the proposed changes do not present a significant hazard.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

*Attorney for licensee:* Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell, & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

*NRC Project Director:* Jose A. Calvo

**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:* June 23, 1987, as supplemented March 29, 1989.

*Description of amendment request:* The proposed amendments would add incinerated oil surveillance and radioactive release requirements to the Radiological Environmental Technical Specifications (RETS).

*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 TS and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the incineration of radioactive waste oil does not affect the function, operation, or failure mode analysis of any safety-related equipment at the Brunswick Plant. Other changes are administrative in nature and, therefore, do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated for the same reasons as stated in Item 1.

3. The proposed amendment does not involve a significant reduction in a margin of safety because the addition of Item C in Table 4.11.2-1 ensures that each batch of radioactive waste oil is analyzed prior to incineration, thereby, maintaining annual releases to less than 0.1 percent of 10 CFR 50, Appendix 1 limits.

The staff has evaluated the proposed changes and find that the changes will formalize licensee commitments to procedures that have been used by the licensee. These commitments were previously approved by the staff under the Brunswick Radiololgical Environmental Technical Specifications (RETS) Program.

The staff has reviewed the CP&L determinations and is in basic 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. Johnson, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602.

*NRC Project Director:* Elinor G. Adensam

**Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina**

*Date of amendment request:* March 30, 1989

*Description of amendment request:* The proposed amendment affects two Technical Specifications (TS) associated with refueling operations. The first is Specification 3/4.9.1, Boron Concentration. Currently, Table 4.9-1 provides a valve arrangement intended to prevent a boron dilution event while in Mode 6. The specified valve arrangement does not allow the Refueling Water Storage Tank (RWST) to be refilled while in Mode 6. The proposed change allows an alternate valve arrangement, permitting makeup to the RWST. Also, the following adminstrative changes would be made to Specification 3/4.9.1 to make it easier to use and to avoid possible operator confusion.

The table related to administrative controls on valves to prevent dilution during refueling, Table 4.9-1, in TS 3/4.9.1 would be moved from the surveillance section of the TS, referenced in the Limiting Condition for Operation (LCO) section and renumbered as Table 3.9-1 because it is more appropriate and less likely to produce confusion in th LCO section. In addition, the renumbered Table 3.9-1 would be reformatted. The reformating of Table 3.9-1 would include a retitled and descriptively expanded "Valve Position During Refueling" column.

The second change is to Specification 3/4.9.2, Instrumentation. This change is purely administrative in nature intended to clarify that both action requirements must be fulfilled with two inoperable Source Range Neutron Flux Monitors.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of 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.

As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Technical Specification 3/4.9.1 establishes administrative controls over certain valves during refueling operations to preclude the possibility of uncontrolled boron dilution of the filled portion of the RCS. This action prevents flow to the RCS of unborated water by closing flow paths from sources of unborated water. However, the current arrangement requires valve 1CS-149 to be locked closed which prevents makeup of borated water to the Refueling Water Storage Tank (RWST). The proposed change allows alternate valve

arrangement, permitting makeup to the RWST. Requiring valves 1CS-155 and 1CS-156 to be maintained closed with their main control board switches in the "Shut" position and manual valves 1CS-265, 1CS-274, and 1CS-287 to be locked closed provides operational flexibility with respect to borated water sources while administratively precluding the possibility of uncontrolled boron dilution event in Mode 6. Therefore, boron dilution while in Mode 6 remains a non-credible event and neither the probability or consequences of a Mode 6 boron dilution event are affected by the proposed change. The remaining changes to Technical Specifications 3/4.9.1 and 3/4.9.2 are administrative in nature and, therefore, can not increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change merely provides an alternate valve arrangement which isolates sources of unborated water while in Mode 6. This valve arrangement offers an equivalent method for ensuring that boron dilution while in Mode 6 remains a non-credible event to that of the existing specification. As such, this change does not create a new or different kind of accident. The remaining changes to Technical Specifications 3/4.9.1 and 3/4.9.2 are administrative in nature and, therefore, can not create the possibility of 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. As stated above, the alternate valve arrangement of the proposed amendment provides an equivalent method for ensuring that boron dilution while in Mode 6 remains a non-credible event. As such, the margin of safety is not affected by the proposed amendment. The remaining changes to Technical Specifications 3/4.9.1 and 3/4.9.2 are administrative in nature which clarify the specifications and, therefore, do not involve a reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

*Attorney for licensee:* R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

*NRC Project Director:* Elinor G. Adensam

**Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois**

*Date of application for amendment request:* December 21, 1988

*Description of amendment request:* Commonwealth Edison Company (CECo) has proposed changes to the Dresden Units 2 and 3 Technical Specifications (TS) that would remove excessive testing requirements for other systems or subsystems of the Emergency Core Cooling Systems (ECCS) or Standby Gas Treatment Systems (SBGT) when one system or subsystem is inoperable. Present TS surveillance requirements for ECCS and SGTS provide for demonstrating the operability of other systems or subsystems when one of the following systems, subsystems, or components is inoperable: Core Spray subsystem; Low Pressure Coolant Injection (LPCI) pump; LPCI subsystem; Containment Cooling subsystem service water pump, Containment Cooling subsystem; High Pressure Coolant Injection (HPCI) subsystem; relief valves of the Automatic Depressurization System; Isolation Condenser system; unit or shared diesel generator; or SBGT subsystem. For example, if one Core Spray subsystem is inoperable, the current TS would require that the operability of the operable Core Spray subsystem and the LPCI subsystem be demonstrated immediately and daily thereafter.

The proposed amendment would remove excessive system testing requirements while maintaining adequate assurance of systems operability needed for accident mitigation. The present testing requirements for ECCS and SBGT were chosen to be very conservative at a time when there was a lack of plant operating history and lack of a sufficient equipment failure data base to choose other testing methods. Since initial development of the Dresden Unit 2 and 3 Technical Specifications, plant operating experience has demonstrated that multiple testing of other ECCS or SBGT systems when one system is inoperable is not necessary to provide adequate assurance of system operability. Operability of these systems is shown by checking records to verify that valve lineups, electrical lineups and instrumentation requirements have not been changed since the last time the system was verified to be operable. These changes are consistent with more recent BWR Technical Specifications that accept system operability based on satisfactory performance of monthly, quarterly, refueling interval, post maintenance or other specified performance tests without requiring additional testing when another system is inoperable.

In addition the proposed amendment would change the following:

(1) The HPCI operability requirements in TS Sections 3.5.C/4.5.C from whenever the reactor pressure is greater than 90 psig to whenever the reactor pressure is greater than 150 psig. Currently the HPCI isolates below a steam line pressure of 100 psig which is inconsistent with the operability requirements. In addition, the proposed change to 150 psi is supported by system design flow and pressure requirements, present testing requirements, and provides margin to the present setpoint for system automatic isolation on low steam line pressure;

(2) The Surveillance Requirement 4.5.C.1 of the TS for the HPCI pump flow testing to add a second low reactor steam pressure flow rate test which will be performed each refueling outage or an outage during which HPCI maintenance was performed;

(3) TS Sections 3.5.D and 3.5.E to raise the minimum operability requirements for the Automatic Pressure Relief and the Isolation Condenser from 90 psig to 150 psig. This change of operability will preserve consistency between the TS for HPCI, Automatic Depressurization System and the Isolation Condenser;

(4) Sections 3.7.B.2/4.7.B.2 and 3.7.B.3/4.7.B.3 of the TS for the SGTS to delete outdated requirements, provide clarifications, provide administrative changes and provide frequency of performing SGTS surveillances consistent with other testing provisions in the TS and in compliance with Regulatory Guide 1.52; and

(5) Sections 4.7.C.1.a, b and d for Dresden Unit 2, 3.7.C.2/4.7.C.2, and Definition Z of the TS for the Secondary Containment Integrity Requirements to: (a) delete outdated requirements; (b) provide administrative changes; (c) provide clarifications (i.e. change term "circuit" to describe SGTS to "subsystem"; (d) allow 4 hours to restore secondary containment prior to requiring an orderly reactor shutdown to at least hot shutdown within the next 12 hours and cold shutdown within the following 24 hours; (e) a change to surveillance frequency to permit performance within allowed extensions; and (f) relocate operability requirements of the Core Spray and LPCI subsystems from the Secondary Containment TS Section to Section 3.5.A related to Core Spray and LPCI requirements.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application as follows:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

a. The present testing requirements for ECCS and SBGT when one system (or subsystem) is inoperable represent requirements beyond those necessary to adequately demonstrate system operability. Other testing requirements that are not affected by this proposed amendment provide assurance that remaining ECCS and SBGT systems are operable and capable of performing their design intent. The proposed deletion of multiple system testing will conform Dresden Units 2 and 3 to current BWR plant operating practices. ECCS and SBGT perform accident mitigation functions. Because changing testing requirements will not change the probability of accident precursors, this proposed amendment does not affect the probability of an accident previously evaluated. The proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated because testing other than multiple system testing ensures that the present level of operability for the ECCS and SBGT systems is maintained. Changes proposed to Sections 3.5.A.7 and 3.5.F.1 are administrative in nature and do not alter the intent of present Technical Specifications requirements.

(b) The proposed amendment allows the HPCI operability provisions in LCO 3.5.C.1 and 3.5.C.3 to be in compliance with system design requirements. The proposed amendment clarifies and adds to the surveillance requirements for HPCI subsystem testing. Additional HPCI subsystem flow rate testing is specified on an operating cycle interval to ensure HPCI operability at low reactor pressure. When performed during startup after an outage, this testing will be completed prior to reaching rated reactor pressure, thus providing assurance that HPCI will function as designed. Because the proposed changes ensure consistency between design and Technical Specification requirements and enhance present HPCI testing provisions, no increase in accident probability or consequences is involved.

(c) The proposed amendment preserves consistency between Technical Specifications for HPCI, ADS and the Isolation Condenser. System availability at reactor pressures exceeding the capabilities of the LPCI and core spray systems is not changed. FSAR Section 6.2.7 analyses take credit for LPCI and core spray flow prior to reaching a reactor pressure of 150 psig. Section 6.2.7 does not take credit for the Isolation Condenser.

(d) The changes proposed for the SBGT system specification involve administrative as well as changes to provide consistent application of surveillance interval provisions. The Note 1 provisions are outdated and not required to be used for the SBGT system. The terminology change to SBGT "subsystem" is administrative in nature and cannot affect any accident analysis. The change to the surveillance frequency recognizes that use of maximum surveillance interval extensions is appropriate and follows the intent of present Definition CC. The performance of the required surveillances will be performed with the allowed extensions per Definition CC. This surveillance frequency change is not significant and follows present industry testing methods for allowing surveillance interval extensions. Due to the administrative nature of the changes, and because the change is made to provide consistency in application of surveillance intervals without reducing the availability of the SBGT system, these changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.

(e) The proposed amendment adds reasonable repair time for Secondary Containment Integrity and specifies an orderly plant shutdown rather than defaulting to the provisions of Specification 3.0.A. Adding these provisions to the Technical Specifications does not affect an accident previously evaluated. The 4-hour time frame allowed for repairs is very small in terms of providing an accident window. The proposed 36-hour time for an orderly reactor shutdown is similar to current provisions in LCO 3.7.B.1.b on SBGT and is the same shutdown provisions required by current Specification 3.0.A. Therefore, the 4-hour repair time and the 36-hour reactor shutdown provision do not involve a significant increase in the consequences of an accident previously evaluated. The proposed amendment will clarify the provisions of Definition Z on Secondary Containment Integrity and this change is considered administrative in nature. The changes to delete completed preoperational testing, delete first cycle testing requirements, delete an expired one-time exception and to move 3.7.C.2/4.7.C.2 to Section 3.5.A are also considered to be administrative in nature. These administrative changes cannot affect the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated because:

a. The change deletes excessive testing requirements for ECCS and SBGT, provides clarification of terminology, and provides consistency in location of requirements. These changes do not introduce any new modes of operation which could initiate a new or different kind of accident. The proposed amendment will not introduce any new types of equipment failure that could cause a new or different kind of accident.

b. The proposed change above does not modify the present HPCI system design or reduce its capability to perform its intended design function. HPCI subsystem testing and demonstration of operability is enhanced by the proposed changes; therefore, there is no possibility of a new or different kind of accident.

c. The proposed change does not modify the present ADS and Isolation Condenser design or reduce its capability to perform their intended function.

d. The changes for SBGT do not allow any new modes of plant operation nor do they represent any physical modifications to the SBGT system. Therefore, these changes cannot create the possibility of a new or different kind of accident.

e. This amendment request adds a repair time for Secondary Containment Integrity and places reactor shutdown provisions in LCO 3.7.C. This change does not allow any new modes of operation which could initiate a new or different kind of accident. This change also provides a clarification which is administrative in nature to ensure proper interpretation of Definition Z on Secondary Containment Integrity requirements. The remaining changes proposed to Secondary Containment section are administrative in nature; therefore, there is not possibility of a new or different kind of accident from any previously evaluated due to these changes.

(3) Involve a significant reduction in the margin of safety because:

a. The proposed amendment will not reduce the availability of ECCS or SBGT systems when required to mitigate accident conditions. Excessive testing of systems and components can reduce rather than increase reliability. An acceptable level of testing to demonstrate operability currently being used at later BWR plants does not include multiple testing of other ECCS or SBGT systems when one or more systems is inoperable. The testing that will remain in the Technical Specifications provides adequate assurance of system performance. The two administrative changes proposed to Section 3.5, due to their nature, cannot involve a significant reduction in the margin of safety.

b. The proposed changes raise the Technical Specification minimum reactor pressure for operability of HPCI from 90 to 150 psig; however, this change is made to recognize present HPCI design parameters and to correct the Technical Specification. HPCI operating pressure overlap with the low pressure ECCS injection pumps is not affected by this change since, (a) actual HPCI design flow and pressure ability has not been modified, and (b) the low pressure system admission valves actuate between 300 and 250 psig during a design basis LOCA blowdown. HPCI testing requirements are clarified and enhanced by these proposed changes thus providing additional assurance of HPCI operability when required. HPCI

system design performance requirements are not modified by this change.

c. The proposed changes raise the Technical Specification minimum reactor pressure for operability of Automatic Pressure Relief and the Isolation Condenser from 90 to 150 psig. Adequate system operating pressure overlap with the low pressure ECCS injection pumps is preserved since the low pressure admission valves are set to open between 300 and 350 psig.

d. The changes to SBGT involving deletion of Note 1 and changing terminology to SBGT "subsystem" are administrative changes that cannot affect any margin of safety. The change to the surveillance frequency can allow longer surveillance intervals then present, but these allowances are small and are accepted as standard industry testing practice. Therefore, the change to the surveillance frequency does not represent a significant reduction in the margin of safety involving availability of the SBGT system.

(e) The proposed 4-hour repair time for Secondary Containment Integrity is a reasonable time frame to allow for determination of the problem and for correcting the problem. The present omission of a repair time could cause an unneeded shutdown and does not reflect current operating practice at later BWR plants. The 36-hour plant shutdown requirement reflects present 3.0.A requirements. The proposed change to Definition Z on Secondary Containment Integrity, the proposed deletion of Surveillance Requirements 4.7.C.1.a, 4.7.C.1.b, 4.7.C.1.d for Unit 2, and the proposed change to move Specification 3.6.C.2/4.7.C.2 are administrative in nature and do not represent a reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards analyses given above. Based on this review, the staff proposes to determine that the proposed amendments meet the three 10 CFR 50.92(c) standards and do not involve a significant hazards consideration.

*Local Public Document Room location:* Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

*Attorney for licensee:* Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

*NRC Project Director:* Daniel R. Muller

**Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Unit Nos. 1 and 2, LaSalle County, Illinois**

*Date of application for amendments:* March 16, 1989

*Description of amendments request:* The proposed amendments to Operating License No. NPF-11 and Operating License No. NPF-18 would revise the LaSalle Units 1 and 2 Technical Specifications to conform with the diesel generator test schedule recommendations given in NRC Generic Letter 84-15 and, additionally, remove footnotes which are no longer applicable to bring the Unit 1 Technical Specifications into conformance with the Unit 2 Technical Specifications. The current requirements given in Table 4.8.1.1.2-1 would be replaced with the proposed requirements given in Table 4.8.1 of Generic Letter 84-15. The new test schedule will help to establish the reliability of the diesel generators to an acceptable level while reducing the degradation of the diesel generators caused by excessive testing. Administrative changes to the Unit 1 Technical Specifications have also been proposed to remove unnecessary footnotes and to correct an error in paragraph 3.8.1.1.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the diesel generator test schedule is a technique for establishing the reliability of the diesel generators. The new test schedule, as proposed in the amendment request, will help to establish the reliability of the diesel generators, to an acceptable level, while reducing the degradation of the diesel generators caused by excessive testing. Since the reliability of the diesel generators is not degraded, and may actually be improved by the proposed change, the probability or consequences of an accident previously evaluated will not be increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed test schedule does not degrade the reliability of the diesel generators, therefore, the possibility of a new or different kind of accident is not created by the proposed changes.

3. Involve a significant reduction in the margin of safety because the specification revisions to the proposed test schedule do not degrade the reliability of the diesel generators, therefore, the proposed amendment does not involve a significant reduction in the margin of safety. Since the proposed amendment will reduce the degradation of the diesel generators caused by excessive testing, the margin of safety may actually be improved.

*Local Public Document Room location:* Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

*Attorney to 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:* September 21, 1988

*Description of amendment request:* The proposed change will revise Specification 3/4.3.4, ATWS Recirculation Pump Trip System Instrumentation. The proposed TS changes provide appropriate provisions for the two-out-of-two trip logic and will allow Fermi-2 TS to better reflect the as-built plant design.

*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 amendent to a facility operating license. A proposed amedment to an operating license for a facility in accordance with the proposed amendent would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes against the above standards as required by 10 CFR 50.92. The licensee concluded that:

(1) The proposed change to delete the present ACTION b. which allows one channel of ATWS Recirculation Pump Trip System Instrumentation in one trip system to remain inoperable for 14 days with no requirement that it be placed in the trip condition and to replace this ACTION with four action statements with an increasing progression of ACTIONS according to severity, does not involve a significant increase in the probability or consequences of an accident previously evaluated. Their proposed change is appropriate due to the deletion of the Reactor Recirculation Pump drive motor breaker trips which utilized a one-out-of-one trip logic for each drive motor breaker. The remaining trip of the Reactor

Recirculation Pump field breakers remains unchanged. This trip utilizes a two-out-of-two trip logic of either RPV Water Level Low-Level 2 or RPV Pressure-High. The proposed ACTION b. which addresses one inoperable channel in one or both trip systems, requires placing the inoperable channel(s) in the tripped condition within 1 hour. This ACTION would not result in a trip of the pump, but upon receipt of the second trip signal for the same trip function (level or pressure) in the same trip system, a trip would result as intended. The probability and consequences of an accident has not been increased since this proposed ACTION is consistent with other instrument ACTIONS which place a channel in the tripped condition if this can be accomplished without causing the trip function to occur. In addition, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered.

The proposed change to add ACTION c., which addresses the condition of two or more channels less than required by the Minimum OPERABLE Channels per Trip System requirement, does not involve a significant increase in the probability or consequences of an accident previously evaluated. The ACTION is subdivided depending on which channels are inoperable. (1) If the inoperable channels consists of one RPV Water Level Low-Level 2 channel and one RPV Pressure-High channel, both channels are placed in the tripped condition within 1 hour. This ACTION will not result in a pump trip if the other channels are OPERABLE. However, if placing these channels in the tripped condition would result in a trip of the pump (the other channel for the same trip function in the same trip system being tripped), the trip system is declared inoperable. (2) If the inoperable channels include two channels for the same trip function, i.e., two RPV Water Level Low-Level 2 channels or two RPV Pressure-High channels, the trip system is declared inoperable. If the channels were both placed in the tripped condition, a trip would occur. The probability and consequences of an accident has not been increased as the ACTIONS taken are conservative with respect to the trip function and the trip will automatically occur when actuated by the remaining OPERABLE channels. In addition, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered.

The proposed ACTION d., for one inoperable trip system, which would allow 72 hours to restore the inoperable trip system to OPERABLE status or be in at least STARTUP within the next 6 hours, does not involve a significant increase in the probability or consequences of an accident previously evaluated. The other trip system would be OPERABLE and capable of performing the trip actuation. The probability and consequences of an accident has not been significantly increased as the proposed change requires the inoperable subsystem to be returned to OPERABLE status within 72 hours. In addition, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered.

The proposed ACTION e., for both trip systems inoperable, which requires that at least one trip system be restored to OPERABLE status within 1 hour or be in at least STARTUP within the next 6 hours, does not involve a significant increase in the probability or consequences of an accident previously evaluated. The 1 hour limit is appropriately conservative to return at least one trip system to OPERABLE status. The probability and consequences of an accident has not been significant increased as the ACTION requires the plant to be in at least STARTUP within the next 6 hours. In addition, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered. The proposed change to footnote, *, in Table 3.3.4-1, ATWS Recirculation Pump Trip System Instrumentation, to allow one channel to be placed in an inoperable status for up to 2 hours for required surveillance provided the other channel of the same trip function is OPERABLE, does not involve a significant increase in the probability or consequences of an accident previously evaluated. The footnote, as proposed, ensures that an OPERABLE channel is monitoring a trip function during surveillance testing. The channels for the other trip function are now covered by the ACTION requirements and thus no longer need to be included in the footnote. The probability and consequencesof an accident has not been increased as the proposed change is consistent with other instrumentation Specifications for allowable surveillance time. In addition, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered.

(2) The proposed change to replace the existing ACTION statement with the proposed four ACTION statements does not create the possibility of a new or different kind of accident from any accident previously evaluated . As in (1) above, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered. The requested change does not create any new accident mode.

The proposed change to footnote, *, in Table 3.3.4-1, ATWS Recirculation Pump Trip System Instrumentation, to allow one channel to be placed in an inoperable status for up to 2 hours for required surveillance provided the other channel of the same trip function is OPERABLE, does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in (1) above, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered. The requested change does not create any new accident mode.

(3) The proposed change to replace the existing ACTION statement with the proposed four ACTION statements does not involve a significant reduction in a margin of safety. As stated in (1) above, the deletion of ACTION b., which does not address placing an inoperable channel in the tripped condition, and replacing it with four ACTIONS (b. through e.) to allow placing inoperable channels in the tripped condition where appropriate, allows the ACTIONS to more appropriately address the as-modified plant design.

The proposed change to footnote, *, in Table 3.3.4-1, ATWS Recirculation Pump Trip System Instrumentation, to allow one channel to be placed in an inoperable status for up to 2 hours for required surveillance provided the other channel of the same trip function is OPERABLE, does not involve a significant reduction in a margin of safety. As stated in (1) above, the allowance for surveillance is consistent with those in other instrumentation Specifications and is appropriate for this Specification since the channels associated with the other trip function are now covered by ACTION requirements.

The staff has reviewed the licensee's evaluation and concurs with it. 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:* 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.

**Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan**

*Date of amendment request:* September 30, 1988

*Description of amendment request:* The proposed amendment would change TS Section 3/4.7.1.5 for the Ultimate Heat Sink to better reflect the Fermi-2 as-built conditions and design bases.

*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 required by 10 CFR 50.92. The licensee concluded that the plant design bases do not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The changes act to provide greater assurance that the Ultimate Heat Sink is available by providing

provisions appropriate for its design as a single water source. By allowing unlimited operation with the reservoirs cross-connected, the change acts to increase the consequences of a below grade breach of the Category I RHR reservoir structure. This is because the level of both reservoirs instead of one reservoir would equalize with the site ground water level. However, since 90 percent of the reservoir capacity is below the ground water level the resultant impact on the ability of the RHR reservoirs to supply a 30-day cooling capacity is not judged to be significant. Further, adequate time for compensatory measures for any such breach is likely to be available since the rapid reservoir level decrease would be easily detectable.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not modify plant design. The change allows unlimited operation with the reservoirs cross-connected where currently a not cross-connected line-up is implied by the LCO requirement of two independent reservoirs. Cross-connected operation does not create a new accident mode since cross-connecting the reservoirs is pre-establishing the conditions necessary for each RHR division to access the full capacity of the Ultimate Heat Sink. Thus, no new mode of failure of the Ultimate Heat Sink is created.

(3) Involve a significant reduction in a margin of safety. By providing provisions appropriate to the design of the Ultimate Heat Sink, the change acts to increase the margin of safety by reducing the possibility of inappropriate system operation.

The proposed change to exclude ACTIONS which allow continued operation for an unlimited time period from the provisions of Specification 3.0.4 does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The change allows entry into an OPERATIONAL CONDITION where, if the situation covered by the ACTION were to occur while in the OPERATIONAL CONDITION, operation for an unlimited time would be allowed. As the measures called for by the ACTIONS provide equivalent assurance that the Ultimate Heat Sink can perform its intended functions, the probability and consequences of any previously evaluated accident is not changed.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not modify plant design or operation and, therefore, creates no new accident modes.

(3) Involve a significant reduction in a margin of safety. The change allows power increases, by allowing OPERATIONAL CONDITION changes, which previously would have been prohibited until the situation causing the need for the ACTION was rectified. In these cases, however, the compensatory measures of the ACTION requirements provide equivalent assurance that the Ultimate Heat Sink can perform its intended functions. Thus, the safety margin is maintained.

*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:* Lawrence A. Yandell, Acting.

**Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan**

*Date of amendment request:* November 15, 1988

*Description of amendment request:* The proposed amendment would revise condition (9) of the license issued July 15, 1985, and would remove fire protection Technical Specifications 3/4.3.7.9, 3/4.7.7.1 through 3/4.7.7.6, 3/4.7.8, and 6.2.2.e, and the corresponding Section 3/4 Bases, and revise Technical Specifications 6.2.2.6 and 6.5.1.6. Generic Letters 86-10, dated April 24, 1986, and 88-12, dated August 2, 1988, provided guidance to licensees to request removal of the fire protection Technical Specifications. The licensee's 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 considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

The 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 TS requirements by reference to the procedures implementing these requirements, into the Updated Final Safety Analysis Report (UFSAR), and the use of the standard License Condition on fire protection will ensure that the Fire Protection Program, including the systems, 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 UFSAR. Also, the provisions of 10 CFR 50.59 would then apply directly for changes the licensee desires to make in the Fire Protection Program. In this context, the determination of the involvement of an unreviewed safety question defined in 10 CFR 50.59(a)(2) would be made based on the "accident...previously evaluated" as 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 Program which can be made without prior Commission approval, i.e., without introduction of an unreviewed safety question. The revised License Condition and the removal of the existing TS requirements on fire protection do 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 proposed 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 and the removal of the fire protection requirements do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed modification of Administrative Controls, Section 6 of the Technical Specifications provides requirements consistent with the administrative control requirement for other programs addressed by License Conditions. Specifically, the responsibilities of the Onsite Review Organization will include a Fire Protection Program review under Specification 6.5.1.6. The changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

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 will be suitable

administrative controls to ensure that any 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 considerations.

*Local Public Document Room location:* Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 38161. Attorney for Licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

*NRC Project Director:* Lawrence A. Yandell, Acting.

**Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan**

*Date of amendment request:* November 15, 1988

*Description of amendment request:* The proposed amendment clarifies the location of the noble gas monitor in the Fermi-2 off gas system. In addition, the term "HOT STANDBY" in the Action statement of Section 3.11.2.7 of the Technical Specifications (TSs) is replaced by "STARTUP, with all main steamlines isolated."

*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 change in the limiting condition for operation (LCO) is mainly a change in words. The term HOT STANDBY is not in Fermi-2 Technical Specifications, but the words "hot standby" are contained in the description of the mode switch position as part of the definition of STARTUP in Table 1-2. Identifying the location of the monitor in the main condenser off gas system does not affects its function. Therefore, this change to "STARTUP, with all steam lines isolated," and clarifying the monitor location, does not increase the probability or consequences or an accident previously evaluated.

(2) The change in terminology and description of where the monitor is measuring the off gas radioactivity does not create a new or different kind of accident not previously analyzed. The function of the system is not affected and the requirement to reduce reactor power and isolate the main steam lines upon evaluation of the monitor and/or core condition is not altered by this proposed change.

(3) The margin of safety is not significantly reduced in that neither the functions of the system, the action to secure the release when appropriate, nor the surveillance requirements are changed.

The staff has reviewed the licensee's evaluation and concurs with it. 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:* 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:* Lawrence A. Yandell, Acting.

**Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan**

*Date of amendment request:* November 15, 1988

*Description of amendment request:* The proposed change provides a revised list of required instrumentation in order to minimize the need for interpretations in Specification 3/4.3.7.5, Accident Monitoring Instrumentation. As a result of the proposed change, other specifications were identified for concurrent changes. Table 3.3.7.5-1 contains a footnote referring to a Special Test Exception for Oxygen Concentration. The period for which this exception was valid has passed. Therefore, the proposed amendment also includes deletion of the Special Test Exception (Specification 3/4.10.5) and corresponding footnote in Specification 3/4.6.6.2, as well as deletion of the Table 3.3.7.5-1 footnote. Deletion of the corresponding Bases for the Special Test Exception is also proposed.

*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 to Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, to list which instruments are required to monitor the required parameters over the ranges specified in Regulatory Guide 1.97, Revision 2, December 1980 for Reactor Vessel Water Level, Standby Gas Treatment System Radiation Monitors, and Neutron Flux does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change for Reactor Vessel Water Level lists Fuel Zone and Wide Range. The proposed change for Standby Gas Treatment System Radiation Monitors lists SGTS-Noble Gas (Mid Range) which is the channel that automatically starts the accident monitors, SGTS AXM-Noble Gas (Mid Range), and SGTS AXM-Noble Gas (High Range) which are the accident monitoring channels. The footnote clarifies that the specified channels are required for each Standby Gas Treatment System subsystem since the monitoring channels monitor only a single subsystem each. The proposed change for Neutron Flux lists Power Range Monitors and Intermediate Range Monitors. This proposed change is an enhancement to provide a more detailed list of required instrumentation. The probability and consequences of an accident have not been increased by providing a more detailed list of requirements. In addition, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered.

The proposed change to Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, for Neutron Flux to change the Required Number of Channels from 2 to 1/division does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change requires that of the 2 channels required, at least 1 of these channels is in each division for purposes of redundancy in power supply and instrument electronics. The probability and consequences of an accident have not been increased by requiring redundancy for the required instrumentation and in fact it has been decreased. In addition, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered.

The proposed change to Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, to add the word "automatic" to Primary Containment Isolation Valve Position does not involve a significant increase in the probability or consequences of an accident previously evaluated. The

proposed change specifies automatic valves, which are those specified in 3/4.6.3, Primary Containment Isolation Valves, Section A, Automatic Isolation Valves. This is consistent with the intent of Regulatory Guide 1.97, Revision 2, December 1980. The probability and consequences of an accident have not been increased as this change is a clarification of the Specification. In addition, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered.

The proposed change to Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, Primary Containment Isolation Valve Position to change from ACTION 80 to 82 does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change allows 48 hours to restore the indication to OPERABLE status as does the current ACTION. At that time, the current Specification requires that the plant be in at least HOT SHUTDOWN within the next 12 hours. The proposed change would declare the valve inoperable and specifies ACTION a. of Specification 3/4.6.3, Primary Containment Isolation Valves. If the ACTIONS of Specification 3/4.6.3 cannot be satisfied, this would also result in a shutdown to at least HOT SHUTDOWN within the next 12 hours and further specifies COLD SHUTDOWN within the following 24 hours. The probability and consequences of an accident have not been increased since the ACTIONS of the Primary Containment Isolation Valve specification will ensure PRIMARY CONTAINMENT INTEGRITY is promptly restored or result in a shutdown to HOT SHUTDOWN in the same period of time as the current specified ACTION and additionally requires the plant to be in COLD SHUTDOWN within the following 24 hours. In addition, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered.

The proposed change to Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, to delete Drywell Sump Level does not involve a significant increase in the probability or consequences of an accident previously evaluated. These sumps are automatically isolated on a LOCA signal. The sumps will overflow to the Suppression Pool where level information is available throughout the course of an accident. The probability and consequences of an accident have not been increased since the post-accident function intended by Regulatory Guide 1.97, Revision 2, December 1980 is performed by the suppression pool instrumentation which is available and required by this Specification. In addition, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered.

The proposed change to Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, Surveillance Requirements, to coincide with the proposed changes to the required instruments in Table 3.3.7.5-1 does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change to the Surveillance Requirements is necessary such that the Surveillance Requirements support the OPERABILITY of the required instrumentation. The probability and consequences of an accident have not been increased as the proposed change is required to support OPERABILITY of the instrumentation. In addition, the change does not result in any modification to the plant or system operation and no safety-related equipment is altered.

The proposed change to Technical Specifications 3/4.10.5, Special Test Exceptions - Oxygen Concentration, to delete the specification and to delete the footnote in Specifications 3/4.3.7.5, Accident Monitoring Instrumentation and 3/4.6.6.2, Drywell and Suppression Chamber Oxygen Concentration, which refers to this test exception does not involve a significant increase in the probability or consequences of an accident previously evaluated. This proposed change deletes a special test exception which is not applicable after 120 Effective Full Power Days (EFPD) of reactor operation. Fermi 2 has operated greater than this limit. The probability and consequences of an accident have not been increased since the Specification is no longer valid due to exceeding the conditions of the exception. In addition, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered.

(2) The proposed change to the Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, to list which instruments are required to monitor the required parameters over the ranges specified in Regulatory Guide 1.97, Revision 2, December 1980 for Reactor Vessel Water Level, Standby Gas Treatment System Radiation Monitors, and Neutron Flux does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in (1) above, the change does not result in any modifications to the plant or system operations and no safety-related equipment is altered. The requested change does not create any new accident mode.

The proposed change to Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, Neutron Flux to change the Required Number of Channels from 2 to 1/division does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in (1) above, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered. The requested change does not create any new accident mode.

The proposed change to Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, to add the word "automatic" to Primary Containment Isolation Valve Position does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in (1) above, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered. The requested change does not create any new accident mode.

The proposed change to Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, Primary Containment Isolation Valve Position to change from ACTION 80 to 82 does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in (1) above, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered. The requested change does not create any new accident mode.

The proposed change to Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, to delete Drywell Sump Level does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in (1) above, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered. The requested change does not create any new accident mode.

The proposed change to Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, Surveillance Requirements, to coincide with the proposed changes to the required instruments in Table 3.3.7.5-1 does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in (1) above, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered. The requested change does not create any new accident mode.

The proposed change to Technical Specifications 3/4.10.5, Special Test Exceptions - Oxygen Concentration, to delete the specification and to delete the footnote in Specifications 3/4.3.7.5, Accident Monitoring Instrumentation and 3/4.6.6.2, Drywell and Suppression Chamber Oxygen Concentration, which refers to this test exception does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in (1) above, the change does not result in any modifications to the plant or system operation and no safety-related equipment is altered. The requested change does not create any new accident mode.

(3) The proposed change to the Technical Specification 3/4.3.7.5, Accident Monitoring Instrumentation, to list which instruments are required to monitor the required parameters over the ranges specified in Regulatory Guide 1.97, Revision 2, December 1980, for Reactor Vessel Water Level, Standby Gas Treatment System Radiation Monitors, and Neutron Flux does not involve a significant reduction in a margin of safety. As stated in (1) above, this proposed change provides a more detailed list of the instruments required since the current Specification only lists the parameter. Where more than one range of instrumentation is required to monitor the specific parameter, these instruments have been specified.

The proposed change to Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, Neutron Flux to change the Required Number of Channels from 2 to 1/division does not involve a significant reduction in a margin of safety. As stated in (1) above, this proposed change does not

reduce the number of channels required, but specifies that at least one channel is required for each division in order that this instrumentation be redundant.

The proposed change to Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, to add the word "automatic" to Primary Containment Isolation Valve Position does not involve a significant reduction in a margin of safety. As stated in (1) above, since the primary containment automatic isolation valves are the specific item of concern, adding the word "automatic" would serve to clarify the specific requirement.

The proposed change to Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, Primary Containment Isolation Valve Position to change from ACTION 80 to 82 does not involve a significant reduction in a margin of safety. As stated in (1) above, this proposed change would revise the ACTION statement such that after a 48 hour period to restore to OPERABLE status, reducing power to at least HOT SHUTDOWN within the next 12 hours is not the only option. The proposed change would allow the alternative of declaring the valve inoperable and taking the ACTION required by Specification 3/4.6.3, Primary Containment Isolation Valves, ACTION a. It may be possible to isolate the penetration, as described in 3/4.6.3 and continue to operate. If this is not accomplished, the same ACTION would result, i.e, in at least HOT SHUTDOWN within the next 12 hours, and further, to COLD SHUTDOWN within the following 24 hours.

The proposed change to Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, to delete Drywell Sump Level does not involve a significant reduction in a margin of safety. As stated in (1) above, the drywell sumps are isolated on a LOCA signal and the instruments do not perform a post-accident function. The sumps will overflow to the suppression pool where level can be monitored throughout an accident scenario.

The proposed change to Technical Specifications 3/4.3.7.5, Accident Monitoring Instrumentation, Surveillance Requirements, to coincide with the proposed changes to the required instruments in Table 3.3.7.5-1 does not involve a significant reduction in a margin of safety. As stated in (1) above, this proposed change is necessary in order to support the OPERABILITY requirements of the instrumentation listed in Table 3.3.7.5-1, Accident Monitoring Instrumentation, as revised by this proposed change.

The proposed change to Technical Specification 3/4.10.5, Special Test Exceptions - Oxygen Concentration, to delete the specification and to delete the footnote in Specifications 3/4.3.7.5, Accident Monitoring Instrumentation and 3/4.6.6.2, Drywell and Suppression Chamber Oxygen Concentration, which refers to this test exception does not involve a significant reduction in a margin of safety. As stated in (1) above, the provisions of this Specification are no longer applicable since the operating exposure of the reactor core has exceeded 120 Effective Full Power Days. The test exception was only valid with exposures less than this maximum limit.

The staff has reviewed the licensee's evaluation and concurs with it. 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:* 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:* Lawrence A. Yandell, Acting.

**Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida**

*Date of amendment request:* November 28, 1988

*Description of amendment request:* The proposed amendment would increase the containment leakage test pressure from 49.6 psig to 53.3 psig. It would also delete surveillance requirements 4.6.1.2d.3 and 4.6.1.2.f, both of which refer to valves pressurized by a seal system, since Crystal River 3 does not use a seal system.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided criteria 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 amendment request was analyzed in light of the above three criteria. In regard to the first two criteria it was determined that the requested change to the containment leakage test pressure does not involve a significant increase in the probability or consequence of an accident previously evaluated, nor does it create the possibility of a new or different kind of accident from any accident previously evaluated. This is true since there would be no change in operating procedures nor any physical change to the plant. The only change would be to increase the containment leakage test pressure. With regard to the deletion of Surveillance Requirements 4.6.1.2d.3 and 4.6.1.2.f, both of the above criteria have been met, since Crystal River 3 does not use a seal system.

In regard to the third criterion it was found that the proposed change to the containment leakage test pressure would not involve a significant reduction in a margin of safety. Appendix J of 10 CFR Part 50 requires containment leakage testing to be performed at the calculated peak containment internal pressure related to the design basis event and this value is to be specified in either the TS or associated bases. The calculated peak containment internal pressure results from a loss of coolant accident. Calculations were performed by the licensee assuming an initial temperature of 110 degrees. The resulting peak pressure was 49.6 psig. Technical Specification 3.6.1.5, however, places a limit on containment air temperature of 130 degrees. Therefore, calculations were performed again, this time using the higher value for initial temperature. These calculations showed that the peak pressure would reach 53.3 psig. This is still less than the design pressure of 55 psig. Therefore, changing the containment leakage test pressure to 53.3 psig will provide consistency between the Technical Specifications and the safety analyses. Testing at not less than this maximum peak containment internal pressure provides assurance that containment leakage will not exceed the value assumed in the safety analyses. The proposed change is more restrictive than the current Technical Specifications and, therefore, does not involve a significant decrease in a margin of safety.

Finally, the deletion of surveillance requirements 4.6.1.2d.3 and 4.6.1.2.f will have no impact on plant safety since Crystal River 3 does not employ a seal system.

The staff has performed a preliminary review of the licensee's proposed change and agrees that the criteria of 10 CFR 50.92 are met. 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:* A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, 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. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia**

*Date of amendment request:* April 5, 1989

*Description of amendment request:* The proposed amendment would delete footnotes which are no longer applicable after the initial entry of Vogtle Unit 2 into Mode 2 operation. The Technical Specification sections involved are 3.3.3.6, 3.4.4, 3.7.1.2, 3.7.7, 3.9.1, Table 3.3-4, and Table 4.3-3.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The removal of footnotes from the Technical Specifications does not affect any equipment involved in the initiation of previously evaluated accidents. The probability of such accidents is therefore not increased. The operation of the PORV's, Auxiliary Feedwater System, Piping Penetration HVAC System, and Radiation Monitors RE-0005 and RE-0006 are not affected by removal of the applicability footnotes. Therefore, the consequences of an accident which would rely on this equipment are not increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not introduce any new equipment into the plant or require existing equipment to operate in a different manner from which it was designed to operate. Since a new failure mode is not introduced by the change, a new or different kind of accident could not result.

3. The proposed change does not involve a significant reduction in a margin of safety. The change does not affect safety limits or limiting safety system settings. The bases for the affected Technical Specifications are not affected by removing the initial applicability footnotes; therefore, margins of safety are not reduced.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

*Local Public Document Room location:* Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

*Attorney for licensee:* Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Altanta, Georgia 30043.

*NRC Project Director:* David B. Matthews

**GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania**

*Date of amendment request:* April 28, 1989

*Description of amendment request:* The proposed amendment would revise Technical Specifications (TS) in Sections 3.5.2, 3.5.4, 5.3.1 and 6.9.5 to replace the values of cycle-specific parameter limits with a reference to the Core Operating Limits Report, which contains the values of those limits. In addition, the Core Operating Limits Report has been included in the definitions section of the TS to note that it is the unit-specific document that provides these limits for the current operating cycle. Furthermore, the definition notes that the values of these cycle-specific parameter limits are to be determined in accordance with the Specification 6.9.5. This section requires that the core operating limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with the applicable limits of the safety analysis. Finally, this report and any mid-cycle revisions shall be provided to the NRC upon issuance. NRC Generic Letter No. 88-16, dated October 4, 1988 provided guidance to licensees on requests for removal of the values of cycle-specific parameter limits from TS. The licensee's proposed amendment is in response to and in conformance with the Generic Letter.

*Basis for proposed no significant hazards consideration determination:* The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the 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 TS is in accordance with the guidance provided in Generic Letter No. 88-16 for licensees requesting removal of the values of cycle-specific parameter limits from TS. The establishment of these limits in accordance with an NRC-approved methodology and the incorporation of these limits into the Core Operating Limits Report will ensure that proper steps have been taken to establish the values of these limits. Furthermore, the submittal of the Core Operating Limits Report will allow the staff to continue to trend the values of these limits without the need for prior staff approval of these limits and without introduction of an unreviewed safety question. Removal of the values of cycle-specific parameter limits and addition of the referenced report for these limits do 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 change does not alter the methods used to establish these limits. Consequently, the proposed removal of the values of cycle-specific limits do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Because the values of cycle-specific parameter limits will continue to be determined in accordance with an NRC-approved methodology and consistent with the applicable limits of the safety analysis, these changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

The proposed amendment does not alter the requirement that the plant be operated within the limits for cycle-specific parameters nor the required remedial actions that must be taken when these limits are not met. While it is recognized that such requirements are essential to plant safety, the values of limits can be determined in accordance with NRC-approved methods without affecting nuclear safety. With the removal of the values of these limits from the Technical Specifications, they have been incorporated into the Core Operating Limits Report that is submitted to the Commission. Hence, appropriate measures exist to control

the values of these limits. These changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

Based on the preceding assessment, the staff believes this proposed amendment involves no significant hazards considerations.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

*Attorney for licensee:* Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz

**Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* May 1, 1989

*Description of amendment request:* The amendment would authorize the sale and leaseback of a portion of Louisiana Power & Light Company's (LP&L's) undivided ownership interest in the Waterford Steam Electric Station, Unit No. 3 (W3).

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations in its request for a license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is as follows:

(a) The proposed amendment to the License to reflect the sale and leaseback transaction does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment would not result in any physical changes to the facility, and all Operating Procedures, Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits as specified in the Technical Specifications to *Facility Operating License No.* NPF-38 will remain unchanged. LP&L will continue to be responsible for the operation of the plant and there will be no changes made in the operating organization or the personnel as a result of the proposed sale and leaseback transaction.

(b) The proposed amendment to authorize a sale and leaseback transaction will not create the possibility of a new or different kind of accident from any accident previously evaluated. The design and design bases of W3 remain unchanged. Accordingly, the current plant safety analyses will remain complete and accurate when addressing the licensing bases and in analyzing plant response and consequences. Additionally, the Operating Procedures, Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits as set out in Technical Specifications for Facility Operating License NPF-38 will remain unchanged. Thus, the plant conditions for which the design bases and accident analyses were performed continue to be valid.

(c) The proposed amendment of the License to authorize a sale and leaseback transaction will not involve a significant reduction in the margin of safety. The plant safety margins for W3 are established through Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits, as contained in the Technical Specifications for Facility Operating License NPF-38. The proposed License amendment will effect no change in either the physical design of the plant or any of these safety margins as specified in the Technical Specifications, and there will, accordingly, be no change to any of the margins of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room Location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

*Attorney for licensee:* Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

*NRC Project Director:* Jose A. Calvo

**Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* March 20, 1989

*Description of amendment request:* In response to the Nuclear Regulatory Commissions recommendations published in Generic Letter 88-06 dated March 22, 1988, Nebraska Public Power District has requested the removal of Technical Specifications Figures 6.1.1 and 6.1.2, titled "NPPD Nuclear Power Group Organization Chart" (P236) and "NPPD Cooper Nuclear Station Organization Chart" (P237), respectively, and all references thereto.

Generic Letter 88-06 also specifies that concurrent with the removal of the organizational charts from the licensee's Technical Specifications, the following general requirements should be added:

1. Line of authority, responsibility, and communication shall be established and defined from the highest management levels through intermediate levels to and including all operating organization positions. Those relationships shall be documented and updated, as appropriate, in the form of organization charts, functional descriptions of departmental responsibilities and relationships, and job descriptions for key personnel positions, or in equivalent forms of documentation.

This will be met through the addition of new Section 6.1.2.A to the Cooper Nuclear Station (CNS) Technical Specifications. The District has reviewed and approved a change to the CNS Updated Safety Analysis Report (USAR) which upgrades the operating organization description by incorporating the Nuclear Power Group (NPG) onsite and offsite organizational charts and departmental descriptions of responsibilities. The affected USAR pages reflecting this change were submitted to the NRC by letter dated January 13, 1989. This change will be reflected in the next annual 10 CFR 50.71(e) USAR revision due to be submitted on or before July 22, 1989.

2. Designation of a management position in the onsite organization that is responsible for overall unit operation and has control over those onsite activities necessary for safe operation and maintenance of the plant.

This will be met through the addition of new Section 6.1.2.B to the CNS Technical Specifications. Section 6.1.2.B will designate the Division Manager of Nuclear Operations as responsible for these activities.

3. Designation of an executive position that has corporate responsibility for overall plant nuclear safety and authority to take such measures as may be needed to ensure acceptable performance of staff in operating, maintaining, and providing technical support to the plant to ensure nuclear safety.

This will be met through the addition of new Section 6.1.2.C to the CNS Technical Specifications. Section 6.1.2.C will designate the Nuclear power Group

Manager as responsible for these activities.

4. Designation of those positions in the onsite organization that require a senior reactor operator (SRO) or reactor operator (RO) license.

This will be met through the addition of new Section 6.1.3.H to the CNS Technical Specifications. The Operations Supervisor, Shift Supervisor, and Control Room Supervisor shall hold SRO licenses while Unit Operators shall hold RO licenses.

*Basis for proposed no significant hazards consideration determination:* In accordance with the requirement of 10 CFR 50.92, the licensee has submitted the following no significant hazards evaluation:

A. Evaluation of this Amendment with Respect to 10 CFR 50.92

The enclosed Technical Specification change is judged to involve no significant hazards based on the following:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Evaluation*: The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change is administrative in nature. Removal of the organization charts from the CNS Technical Specifications represents a change only in the administrative control of revisions to the District's nuclear organization. As described in Section II, "Description of changes" above, several key organizational elements have been added to the CNS Technical Specifications. These organizational requirements have been developed in accordance with the guidance provided by Generic Letter 88-06 and capture the essential aspects of the Nuclear Power Group organization. These include the addition of Sections 6.1.2.B and 6.1.2.C which identify the positions responsible for overall plant safety in the Onsite and Offsite organizations respectively.

This proposed change does not effect any revision to the current nuclear organization or the plant configuration. No changes to the Shift Complement qualifications or personnel requirements have been proposed. Further, removal of the organizational charts does not represent a physical change to the plant, a change to any plant procedure, the institution of any test or experiment, a change in any safety analysis, or a change in organizational conduct of operations. This proposed change, therefore, does not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility for a new or different kind of accident from any accident previously evaluated?

*Evaluation*: This change is administrative in nature and therefore, does not create the possibility for a new or different kind of accident from any previously evaluated. The District is not proposing any procedural, hardware, or organizational changes with this submittal. The organizational functions important to safety will continue to be accomplished through the employment of persons competent in the appropriate areas of expertise.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

*Evaluation*: This proposed change does not represent any changes in plant procedure or hardware. Since this change is administrative in nature, the margin of safety will not be reduced. This change has the overall effect of increasing organizational efficiency by facilitating organizational adaptation to changing operational needs. The provisions being added to Section 6.1 of the CNS Technical Specifications will assure the essential aspects of the operating organization will remain intact. Additionally, any subsequent organizational changes will constitute changes to the CNS USAR and therefore require evaluation in accordance with 10 CFR 50.59.

B. Additional Basis for Proposed No Significant Hazards 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 7751). The examples include: "(i) A purely administrative change..." The District feels that this proposed change falls under this example. Additionally, Generic Letter 88-06 sets forth the NRC's position that with the addition of certain administrative requirements which "...capture the essential aspects of the organizational structure..." the onsite and offsite organizational charts may be removed. Therefore, the Districts finds that the attached proposed changed to the CNS Technical Specifications involves no significant hazards and should be approved by the NRC.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

*Attorney for licensee:* Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

*NRC Project Director:* Jose A. Calvo

**Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York**

*Date of amendment request:* May 4, 1988

*Description of amendment request:* The proposed amendment would change Technical Specifications 3.6.2 and 4.6.2 to clarify the surveillance requirements for Average Power Range Monitoring scram and rod block instrumentation. Specifically, in Table 4.6.2a, a footnote would be added to point out the fact that the weekly instrument channel calibration is being performed using built-in calibration equipment. In addition, a surveillance requirement to perform a full instrument channel calibration of the APRM upscale and downscale settings once per three months would be added to items (9)(b)(i) and (9)(b)(iii) of Table 4.6.2a. This change is to clarify that the weekly calibration of the APRM instruments currently identified in the Nine Mile Point Unit 1 Technical Specifications is actually an adjustment of the APRM channel based on the power level calculated by a heat balance. A full instrument channel calibration is performed once per three (3) months. Tables 4.6.2a and 4.6.2g would also be revised to clarify that channel calibration is not applicable to the inoperative feature circuitry. In Table 3.6.2g, a footnote would be added to point out that actuation of either of the two trip systems will cause a rod block.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has provided the following analysis:

1. The proposed changes clarify present practices and design. The proposed changes do not represent changes in established procedures. Therefore, the proposed changes will not affect the probability or consequences of an accident.

2. The proposed changes clarify present calibration practices and existing design. The proposed changes will not change the method

for performing the calibrations. Therefore, no new or different kinds of accidents will be created.

3. The proposed changes do not affect operations or change the frequency of calibration (surveillance). Therefore, there is no reduction in a margin of safety.

Based on the above, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Attorney for licensee:* Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

*NRC Project Director:* Robert A. Capra

**Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York**

*Date of amendment request:* June 3, 1988, as modified by letters dated September 28 and November 15, 1988.

*Description of amendment request:* By letter dated June 3, 1988, as amended September 28, 1988, the licensee proposed to amend the Technical Specifications to delete Figure 6.2-1 "Management Organizational Chart," and Figure 6.2-2 "Nuclear Site Organization," in accordance with Generic Letter 88-06, "Removal of Organization Charts From Technical Specifications." Administrative changes to Sections 6.1, 6.2, 6.5, 6.6, and 6.7 are included and Specification 6.9 is being revised to make the Unit 1 Specifications consistent with 10 CFR 50.4. By letter dated November 15, 1988, the licensee amended the amendment application to propose additional administrative changes to the Specifications. These changes reflect the creation of the position of Executive Vice President-Nuclear Operations. This title replaces all current references to Senior Vice President in the Specifications.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of 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 submittals and finds that with respect to deletion of the organization charts:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts from the Technical Specifications does not affect plant operation. As in the past, the NRC will continue to be informed of organizational changes through other required controls. In accordance with 10 CFR 50.34(b)(6)(i) the applicant's organizational structure is required to be included in the Final Safety Analysis Report. Chapter XIII of the Final Safety Analysis Report provides a description of the organization and detailed organization charts. As required by 10 CFR 50.71(e), NMPC submits annual updates to the FSAR. Appendix B to 10 CFR Part 50 and 10 CFR 50.54(a)(3) govern changes to organization described in the Quality Assurance Program. Some of these organizational changes require prior NRC approval. Also, it is NMPC's practice to inform the NRC of organizational changes affecting the nuclear facilities prior to implementation.

(2) The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature, and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

(3) The proposed amendment does not involve a significant reduction in a margin of safety because NMPC, through its Quality Assurance programs, its commitment to maintain only qualified personnel in positions of responsibility, and other required controls, assures that safety functions will be performed at a high level of competence. Therefore, removal of the organization chart from the Technical Specifications will not affect the margin of safety.

With respect to the remaining changes, the Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards consideration (51 FR 7750). One of these examples of actions involving no significant hazards consideration is example (i), "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed changes are within the scope of this example.

Based on the above, the staff proposes that the amendment will not involve a significant hazards determination.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Attorney for licensee:* Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

*NRC Project Director:* Robert A. Capra

**Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York**

*Date of amendment request:* September 22, 1988

*Description of amendment request:* The licensee proposed to amend Section 3.4.5 of the Technical Specifications to clarify the conditions under which the Control Room Air Treatment System must be operable. The current Technical Specification 3.4.5 indicates that the Control Room Air Treatment System must be operable when containment integrity is required. However, containment integrity is not defined within the Technical Specifications.

The Control Room Air Treatment System must be operable whenever reactor building (secondary containment) integrity is required. Reactor building integrity is defined in the Technical Specifications (Definition 1.12, Reactor Building Integrity). Therefore, the proposed change requires the Control Room Air Treatment System to be operable whenever reactor building integrity is required. This change will improve the accuracy and clarity of the Technical Specifications.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2)

create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis:

1. The proposed change merely clarifies when the Control Room Air Treatment System is required to be operable in order to improve the accuracy of the Technical Specifications. Therefore, there will not be an increase in the probability or consequences of an accident previously evaluated.

2. The proposed clarification of Control Room Air Treatment System operability is an administrative change and does not create any new or different kind of accident.

3. The proposed change will not adversely affect the operation of Nine Mile Point Unit 1. Clarification of when the Control Room Air Treatment System is required to be operable will not reduce the margin of safety.

Based upon the above, the staff proposes to determine that the proposed change does 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:* Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

*NRC Project Director:* Robert A. Capra

**Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York**

*Date of amendment request:* June 6, 1988, as modified by letters dated July 22 and November 8, 1988.

*Description of amendment request:* The proposed amendment modifies the licensee's June 6, 1988 application, as amended July 22, 1988. The June 6, 1988, application, as amended, was noticed on September 7, 1988 (53 FR 34608) and proposes to delete the organization charts from the Technical Specifications in accordance with Generic Letter 88-06, "Removal of Organization Charts From the Technical Specifications" dated March 22, 1988. The November 8, 1988 modification revises the application to incorporate a change in the licensee's Nuclear Division Management Organization. The position of Executive Vice President - Nuclear Operations was created. This position incorporated the authority and functions formerly performed by the Senior Vice President.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability of 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 NRC staff has reviewed the licensee's amendment application and concludes that:

(1) The amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated because the change is administrative in nature and is designed to enhance the operation of the facility. The position of Executive Vice President - Nuclear Operations encompasses all of the authority and functions formerly performed by the Senior Vice President. Therefore, the change is essentially only a title change in the Specifications.

(2) The amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because as discussed above, the change is administrative. It does not involve hardware changes to the facility and is for purposes of the Specifications a title change only.

(3) The amendment will not involve a significant reduction in margin of safety because it only changes all of the references to Senior Vice President in the Technical Specification to Executive Vice President - Nuclear Operations. The position of Executive Vice President - Nuclear Operations encompasses all of the authority and functions formerly performed by the Senior Vice President.

Based on the above, the staff proposes to determine that the amendment will not involve a significant hazards determination.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Attorney for licensee:* Mark Wetterhahn, Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

*NRC Project Director:* Robert A. Capra

**Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York**

*Date of amendment request:* January 13, 1989

*Description of amendment request:* The amendment application proposes changes to Technical Specification 3/4.4.1, Recirculation System, to differentiate between recirculation loop drive flow and jet pump loop flow. The current Specifications reference recirculation loop flow and do not differentiate between recirculation loop drive flow and jet pump loop flow. The proposed change will provide clarification. The amendment application also proposes changes to surveillance requirements contained in Section 4.4.1.2. The changes are proposed to increase the sensitivity of performance measuring requirements for determining jet pumps operability and to increase the allowable variance for diffuser-to-lower plenum differential pressure from 10 percent to 20 percent. The amendment application also proposes to incorporate final values for Reactor Coolant System flow parameters as determined from Startup Tests.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In its January 13, 1989 submittal, the licensee provided the following analysis:

*The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident evaluated.*

The proposed amendment involves the changing of recirculation loop flow terms to provide the operators a clearer understanding of the Technical Specification requirements. The implementation of a more sentitive method of determining jet pump operability provides a more reliable indication of the jet pumps' ability to provide a refloodable volume. The increase in allowable deviation for the differential pressure of any individual jet pump is consistent with the allowable

deviation for jet pump flow specified in other surveillances.

The proposed amendment provides assurance that the jet pumps are intact and able to contribute to reflood to two-thirds core height. Thus, the consequences of a recirculation line break are not affected. The increase in loop drive flow for the 100% power, 100% flow operating point is within the core flow limit beneath which no unacceptable core flow induced vibrations were observed. Startup test data has confirmed the previously analyzed thermal power and core flow values required to prevent stratification, as well as minimum forced circulation flow. In summary, operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

*The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.*

Clarification of recirculation loop flow terminology will not change the Reactor Recirculation System and jet pumps' response to previously evaluated accidents. The proposed changes to the performance monitoring criteria for determining jet pump operability will assure the Reactor Recirculation System and jet pumps' response to previously evaluated accidents remain within previously evaluated limits of pressure and temperature. The revised recirculation loop drive flow is below the limit established for possible flow induced vibrations. The proposed amendment does not involve any hardware or operational changes to the plant. Thus, all safety-related systems and components remain within their applicable design limits. In addition, the environmental qualification of plant equipment is not adversely affected by this proposed amendment. Thus, system and component performance is not adversely affected by this change, thereby assuring that the design capabilities of those systems and components are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident from any previously evaluated.

*The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.*

The proposed changes in recirculation loop flow terminology will not affect the existing Technical Specification operational limits or system performance criteria.

The proposed change to monitor jet pump loop flow in lieu of total core flow provides a more sensitive indication of jet pump degradation. As such, it will provide an increase in the margin of safety provided by the surveillance.

The proposed change to the allowable percent deviation from average nominal values for individual jet pump diffuser-to-lower plenum differential pressure from 10% to 20% is required to bring this jet pump performance measurement into conformance with the performance measurements that are looking at jet pump loop flows. Jet pump loop flow is the sum of the individual jet pump flows within the loop. Jet pump flow is the square root of the jet pump diffuser-to-plenum differential pressure signal. A 10% deviation for jet pump loop flow is equivalent to a 20% deviation for jet pump differential pressure. Therefore, the proposed surveillance criteria for jet pump differential pressure is consistent with the criteria for jet pump loop flow. Thus, the margin of safety established by these surveillances has not been reduced.

The limit on loop drive flow provides assurance against vessel internals flow induced vibration. Testing has demonstrated no unacceptable core flow induced vibration occurs in either loop below 45,000 gpm. Thus, a limit of 41,800 gpm provides adequate assurance against unacceptable flow induced vibrations and also establishes an equivalent margin of safety. The remaining recirculation system parameters were confirmed as conservative by startup test data, and no change to the Technical Specifications or corresponding margin of safety is required.

Based on the above, the staff proposes 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, Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

*NRC Project Director:* Robert A. Capra

**Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut**

*Date of amendment request:* April 20, 1989

*Description of amendment request:* The proposed amendment would change the Millstone Unit 3 Technical Specificatons (TS) to allow storage of fuel with an enrichment of up to 5.0 nominal weight percent U-235 as follows: (1) Section 1.0, "Definitions," would be changed by adding new TS 1.40 and 1.41 to define the fuel regional storage pattern, (2) A new TS 3/4.9.13 "Spent Fuel Pool - Reactivity," would be added to limit the fuel $K_{eff}$ to less than or equal to .95, (3) A new TS 3/4.9.14, "Spent Fuel Pool - Storage Pattern," would be added to implement the fuel storage pattern, (4) TS 5.6.1.1, "Criticality" would be changed and expanded to address the storage of fuel utilizing a regional storage system, and (5) A new TS 5.6.3, "Capacity" would be added to address the use of cell blocking devices in the storage of fuel. In addition to the above, the licensee has requested that TS 5.6.1.2, be deleted.

*Basis for proposed no significant hazards consideration determination:* The Millstone Unit 3 spent fuel racks are designed to limit the effective neutron multiplication factor ($K_{eff}$) to less than, or equal to, .95 provided that the stored fuel enrichment is not greater than 3.85 weight percent (w/o) U-235. The licensee has now proposed to store fuel with an enrichment of up to 5.0 w/o U-235. The increased enrichment would be compensated by use of cell blocking devices which would limit the proximity of high enrichment fuel (up to 5.0 nominal w/o U-235).

The Millstone Unit No. 3 spent fuel pool (SFP) storage racks were reanalyzed by Westinghouse utilizing a two-region storage scheme to accommodate a nominal 5.0 w/o U-235 fuel. Region I was reanalyzed to show that fresh 5.0 w/o (nominal) U-235 fuel can be stored in the racks in a three-out-of-four storage scheme. Region II was reanalyzed to take into consideration the changes in fuel and fission product inventory resulting from depletion in the reactor core of fuel with nominal enrichments up to 5.0 w/o U235.

The Region I rack reanalysis was based on maintaining $_{eff}$ less than or equal to 0.95 for storage of Westinghouse 17 x 17 OFA and STD fuel at a nominal 5.0 w/o U-235 utilizing three-out-of-four storage cells in the array. The Region II spent fuel rack reanalysis was based on maintaining $_{eff}$ less than or equal to 0.95 for storage of Westinghouse 17 x 17 OFA and STD fuel at a nominal 5.0 w/o U-235 with an initial enrichment/burnup combination in the acceptable area of proposed TS Figure 3.9-1 with utilization of every cell permitted for storage of the fuel assemblies.

Title 10 CFR Part 50, Section 50.92 contains standards for determining whether a proposed license amendment involves significant hazards considerations. In this regard, the licensee has stated that the proposed changes to the TS do not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed change qualifies the Millstone Unit No. 3 SFP racks for an increase in initial fuel enrichment from the current nominal value of 3.8 weight-percent U-235 to a maximum nominal enrichment of 5.0 weight-percent U-235. The increase in the allowed initial fuel enrichment and the subsequent increase in the SFP Cycle 3-specific decay heat load (due to the burnup and discharge of this fuel) does not adversely impact the results of any previously analyzed accident.

In addition, with regard to TS 5.6.1.2, this TS can be deleted since it restricts the $_{eff}$ of first cycle fuel to .98 when

stored, dry, in the spent fuel racks. Since the spent fuel pool will remain water-filled for the life of the facility, the potential overmoderating effects of aqueous fire-fighting foam, are no longer a concern.

2. Create the possibility of a new or different kind of accident from any previously analyzed accident. Since there are no changes in the way the plant is operated or in the operation of the equipment credited in the design basis accidents, the potential for an unanalyzed accident is not created. Also, no new failure modes are introduced.

3. Involve a significant reduction in the margin of safety. The proposed change qualifies the Millstone Unit No. 3 SFP racks for an increase in initial fuel enrichment. This increase and the subsequent increase in the SFP Cycle 3-specific decay heat load (due to the burnup and discharge of this fuel) does not adversely impact the consequences of any accident previously analyzed; therefore, there is no reduction in the margin of safety.

The NRC staff concurs with the licensee's assessment concerning no significant hazards considerations associated with the April 20, 1989 application. Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards considerations.

*Local Public Document Room location:* Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

*Attorney for licensee:* Gerald Garfield, Esquire, Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103-3499.

*NRC Project Director:* John F. Stolz

**Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California**

*Dates of amendment request:* February 28, 1989 and April 27, 1988 (Reference LAR 89-01)

*Description of amendment request:* The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to:

(1) Change the description of Plant Staff Review Committee (PSRC) membership by using functional and organizational description of the PSRC responsibilities rather than by formal job title,

(2) Specify that the qualifications of each PSRC member shall meet or exceed the requirements and recommendations of ANSI/ANS 3.1-1978,

(3) Increase the PSRC quorum requirements to a majority (more than one-half) of the members of the PSRC, and

(4) Revise the review and approval methodology for procedures to allow independent technically qualified individuals to conduct procedure reviews instead of the PSRC.

Specific TS changes include the following: TS Section 6.5.1 would be revised regarding description of PSRC membership, quorum requirements, qualifications and review responsibilities and would be renumbered to TS Section 6.5.2.; TS Section 6.5.1 would be added regarding the review methodology for procedures; TS Section 6.8 would be revised regarding methodology for procedures.

This request was previously noticed in the **Federal Register** on May 3, 1989 at 54 FR 18950. This replaces the previous notice.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of February 28, 1989, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The change regarding the procedures review methodology will not result in a decrease in the effectiveness of the review methodology and will result in an equivalent or more effective level of review.

The other proposed changes are administrative in nature, do not affect plant operations, constitute more restrictive requirements, and provide greater assurance of effective performance. These changes are expected to result in improved administrative practices. Therefore, these proposed changes will not increase the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

...[T]here is no physical alteration to any plant system, nor is there a change in the method by which any safety related system performs its function. The proposed changes are administrative in nature, are more restrictive and, therefore, do not create the possibility of a new or different kind of accident from any previously evaluated.

c. Does the change involve a significant reduction in the margin of safety?

The proposed changes are administrative in nature or are more restrictive and, therefore, will not reduce any margin of safety.

The NRC staff has reviewed the proposed TS changes and the no significant hazards consideration determination provided in the licensee's February 28, 1989 submittal and finds them acceptable. The staff has also reviewed the additional TS changes proposed in the licensee's submittal of April 27, 1989 and finds that they do not alter the licensee's no significant hazards consideration determination described above. On this basis, the staff proposes to determine that these changes do not involve a significant hazards consideration.

*Local Public Document Room location:* California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

*Attorneys for licensee:* Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

*NRC Project Director:* George W. Knighton

**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:* April 14, 1989

*Description of amendment request:* The proposed Technical Specification changes involve removal of the thermal overload protection bypass capability of the diesel generators A through E Emergency Service Water (ESW) System valves and reduction of the battery load profiles for the Diesel Generator E 125 v dc battery. The changes will support the modification of the diesel generators ESW system valves needed to meet the requirement of 10 CFR Part 50 Appendix R.

*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 April 14, 1989 submittal.

I. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. Since once the auto-loop transfer logic is removed, the Diesel Generator A through D ESW valves no longer have a safety related function other than maintaining the flow path integrity or an isolation boundary when the diesel generator is not aligned. These valves will be open when diesel generators are aligned and will have no automatic actuation functions thus the thermal overload protection does not need to be continuously bypassed nor does it need the capability of being bypassed. With the auto-loop transfer logic de-energized, the Diesel Generator "E" valves' only safety related function (other than flowpath integrity and isolation boundary) is to automatically close during a LOCA and/or LOOP condition when the diesel generator is not aligned but is being tested. The Diesel Generator "E" ESW loop B valves had this auto-close feature incorporated in their design since their installation. The installation of the auto-closure for the loop A valves has the same basis as for the loop B valves. The Technical Specification changes for the loop B valves were approved in Amendment No. 61 for NPF-14 and Amendment No. 32 for NPF-22 dated 3/16/87.

FSAR Subsection 8.3.2.1.1.4 stated 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 design loads. An assessment has been performed by our engineering department which verifies that the battery has adequate capacity to power the actual loads on the 125 v dc system. The new load profile contained in the proposed amendment to the Technical Specifications envelop(e) the actual loads.

II. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Since the proposed changes do not change the function of the ESW system, they will not introduce a new or different kind of event. Any postulated accident(s) resulting from these changes are bounded by previous analysis.

A(s) stated in Part I, 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.

III. Does the proposed change involve a significant reduction in a margin of safety?

No. Since the diesel generator ESW valves no longer provide an automatic safety function, the removal of the continuous thermal overload protection bypass does not reduce a margin of safety. The addition of the auto-close and automatic thermal overload protection bypass for the Diesel Generator "E" Loop A ESW valves does not degrade the margin of safety of the ESW system or diesel generators. This change has already been approved for the Loop B ESW valves.

IEEE 485 requires that the related battery capacity include a margin for 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 profile the Class 1E 125 (v dc) battery will supply its 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 decreased battery loads it can be concluded that the overall safety 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

**Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California**

*Date of amendment request:* January 16, 1986

*Description of amendment request:* The proposed amendment would revise Paragraph 2.C(4) of the license for Rancho Seco Nuclear Generating Station. The request is based on the licensee's re-evaluation of fire areas in its 1985 Updated Fire Hazards Analysis, which no longer requires some of the fire doors and dampers required by the Savety Evaluation referenced in Paragraph 2.C(4). Specifically, the proposed amendment would revise Paragraphs 3.1.5(1), 3.1.30(1), 3.1.25(1) and 3.1.40(5) of the referenced Safety Evaluation such that certain fire doors and dampers would no longer be required due to revised fire boundaries.

*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; (2) Create the possibility of a new or different kind of accident than previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has determined that the proposed change will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the changes in fire loadings are not significant. The revised fire boundaries included in the 1985 Rancho Seco Updated Fire Hazards Analysis no longer require the affected doors and dampers. (2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the affected doors and dampers either no longer penetrate fire boundaries or by other means preclude a fire from propagating to other fire areas. (3) Involve a significant reduction in the margin of safety because based on the fire loadings and the fire boundaries used for the affected areas, the fire would be contained in the area and safe shutdown equipment in other fire areas would be adequately protected.

Accordingly, the licensee has determined that the proposed changes to the license conditions of the Rancho Seco License involve no significant hazards consideration.

The NRC staff has reviewed the proposed amendment and the licensee's determination and find them acceptable. Therefore, the staff proposes to determine that the amendment request does not involve a significant hazards consideration.

*Local Public Document Room location:* Martin Luther King Regional Library, 7430 24th Street Bypass, Sacramento, California 95822.

*Attorney for licensee:* David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P. O. Box 15830, Sacramento, California 95813.

*NRC Project Director:* George W. Knighton

**Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

*Date of amendment requests:* January 13, 1989 (TS 256)

*Description of amendment requests:* The proposed technical specification (TS) for Browns Ferry, Units 1, 2 and 3 would delete the current surveillance performed on redundant but independent systems when a system is declared inoperable. For example, the current TS require that should one core spray system (CSS) loop become inoperable, the remaining CSS loop, the residual heat removal (RHR) system, and the associated diesel generator are required to be operable. The current TS surveillance requires that the other CSS loop shall be demonstrated operable immediately (i.e., tested) and daily thereafter until the inoperable CSS loop is either declared operable or the reactor is shut down. The change would delete these type of requirements from the following systems: CSS, RHR, residual heat removal service water (RHRSW), emergency equipment cooling water (EECW), reactor core injection cooling (RCIC), and automatic depressurization system (ADS). A surveillance to verify the alignment of valves in the injection/safety related flow paths is added.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The current technical specifications require additional surveillance testing be conducted on redundant systems when a system or portion of a system is declared inoperable. This amendment deletes the additional surveillance testing requirements for redundant operable systems when an LCO is entered. The intended function of the existing testing requirement will be served instead by performance of periodic ASME Section XI tests coupled with monthly valve alignment checks. The ASME Section XI testing has been previously submitted for the BFN units 1, 2, and 3 technical specifications by technical specification amendment number 235. The removal of the additional surveillance testing from the technical specifications would decrease the probability of equipment failure because the excessive testing will cause unnecessary wear on the safety related equipment and unnecessary challenges to the safety systems. Also, the probability of human error will decrease as a result of removing the excessive testing. Human error such as misalignment of valves after the system is returned to this normal configuration following testing, and the misdirection of the operators' attention from monitoring and directing plant operations becomes less probable if this testing is not performed. Removing the excessive scope and frequency of surveillance testing, many of which are not required on a daily basis during LCO's, will actually decrease the probability of equipment failure which could require plant shutdown.

2. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The reduction of surveillance testing on redundant systems when the ECCS and RCIC systems enter an LCO will reduce the probability of equipment failure and human error. The deletion of this additional surveillance testing will not reduce the ability of redundant systems to mitigate a design basis accident. Therefore, the possibility of a new or different kind of accident is not created.

3. This change does not involve significant reduction in a margin of safety.

This technical specification change will not reduce the required equipment during an LCO or normal operating conditions given in the technical specifications basis for the residual heat removal, high pressure coolant injection, core spray, residual heat removal service water, emergency equipment cooling water, fill maintenance or automatic depressurization systems. The reduction in testing will decrease the probability of equipment failure and human error. Therefore, the margin of safety for the systems and the equipment contained in these systems will not be significantly reduced.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, TVA has made a proposed determination that the application involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

*Local Public Document Room location:* Athens Public Library, South Street, Athens, Alabama 35611.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

*NRC Assistant Director:* Suzanne Black

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment requests:* April 17, 1989 (TS 89-16)

*Description of amendment requests:* The Tennessee Valley Authority (TVA) proposes to modify Section 6, Administrative Controls, of the Sequoyah Nuclear Plant (SQN), Units 1 and 2, Technical Specification (TS). The proposed changes are to revise Specifications 6.2.3.2 and 6.2.3.4 to reflect the current restructuring of TVA's nuclear power organization. The proposed administrative change specifically addresses the Independent Safety Engineering Group (ISEG) with regard to site and corporate staffing and the corporate official to whom ISEG makes recommendations. The ISEG would provide its recommendations to the Manager of the Nuclear Manager's Review Group instead of the current Director of Nuclear Licensing and Regulatory Affairs. In addition, TVA is proposing to rename ISEG to Independent Safety Engineering (ISE).

*Basis for proposed no significant hazards consideration determination:* TVA provided the following information in its application to support the proposed changes:

The organizational changes within the management structure of TVA's nuclear power organization have been made to consolidate independent oversight and assessment functions. This organizational realignment would place ISE within the Nuclear Manager's Review Group under the newly formed Nuclear Assurance and Services organization. TS 6.2.3.4 currently requires that ISEG make their recommendations to the Director of Nuclear Licensing and Regulatory Affairs. TVA's stated reorganization would, therefore, require that specification 6.2.3.4 be revised to indicate the new corporate official to whom ISE would make recommendations. This corporate official would be entitled Manager of the Nuclear Manager's Review Group.

An additional proposed change has been made to the composition of ISE with regard to staffing of full-time engineers among TVA's nuclear sites. This change to specification 6.2.3.2 clarifies staffing requirements if more than 3 engineers are assigned full-time at both SQN and Browns Ferry Nuclear Plant sites. The manager of ISE would be located at TVA's corporate office and would serve a generic function to support both TVA sites. The combined manpower would continue to provide a total of five dedicated full-time employees within ISE.

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee

requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has provided the following analysis:

TVA has evaluated the proposed TS change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes to the ISEG staffing requirements and the title of the corporate official to whom ISEG makes recommendations has not affected the safe operation of SQN. These changes are administrative in nature and serve to reflect recent organizational changes within TVA's nuclear power program. Since the proposed amendment has not resulted in any changes to hardware, procedures, or the safety analysis report, the probability or consequences of an accident previously evaluated has not been increased.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The proposed change to specification 6.2.3.2 revises ISEG onsite and corporate staffing requirements. These staffing changes continue to provide a total of five dedicated full-time engineers within ISEG. The proposed change to specification 6.2.3.4 provides a change in the corporate official to whom ISEG makes recommendations. These changes are administrative changes that reflect realignment of the management structure within TVA's nuclear power organization. The proposed amendment does not involve a physical change to the facility; therefore, no new or different kind of accident is created.

(3) Involve a significant reduction in a margin of safety. The proposed revision to administrative specifications 6.2.3.2 and 6.2.3.4 reflects current restructuring of TVA's nuclear power organization. These changes in no way affect the physical facility design or safe operation of SQN. The function of ISEG continues to conform with NUREG-0737 requirements for performing [an] independent review of plant activities. Because compliance with the regulatory requirements has not been compromised and because these changes did not alter the facility or its design, there is no reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

*NRC Assistant Director:* Suzanne Black

**Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio**

*Date of amendment request:* November 2, 1987 and January 5, 1989.

*Description of amendment request:* The proposed amendment would correct typographical errors and make minor word changes to achieve consistency between the Technical Specifications and plant nomenclature. It would also delete certain statements which are no longer necessary because of elapsed time and/or completion of specified actions.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes to correct typographical errors and make minor word changes to achieve consistency between the Technical Specifications and plant nomenclature and to delete certain statements which are no longer necessary against the standards provided above and has determined that the changes would have no significant hazards consideration because they are strictly administrative in nature. The staff agrees with this evaluation.

The Commission has provided examples (51 FR 7751) of amendments that are not likely to involve significant hazards considerations. One of these examples, (i), states: "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." The proposed correction of typographical errors and minor wording changes to achieve consistency are administrative in nature and therefore are similar to example (i).

Based on the above, the staff proposes to determine that the proposed amendment would involve no significant hazards consideration.

*Local Public Document Room location:* University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

*Attorney for licensee:* Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John N. Hannon

**Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia**

*Date of amendment requests:* April 6, 1989

*Description of amendment requests:* The proposed Technical Specifications (TS) changes would modify the requirement for dry rotation testing of the inside recirculation spray pumps (IRSP) from monthly to quarterly, and add a requirement to perform full flow testing of the IRSP each refueling outage. In addition, the proposed amendments will require a visual inspection of the containment sumps each refueling outage and after major maintenance of the ISRP to verify sump component integrity and the absence of foreign debris.

*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 reviewed the proposed changes in accordance with the requirements of 10 CFR 50.92 and has determined that the request does not involve significant hazards considerations in that:

1) The implementation of these proposed changes [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 Updated Final Safety Analysis Report (USFAR). The changes continue to require functional testing for operability in accordance with ASME Section XI as modified by our IST Program

Relief Request. Although the frequency for dry testing the Inside Recirculation Spray Pumps has been reduced to quarterly, performing the dynamic flow testing of the pumps each refueling outage provides empirical data to directly evaluate pump performance and operability. In addition, the proposed reduction in dry pump testing, in combination with planned maintenance to overhaul the pumps every five years, reduces the potential for any significant pump bearing degradation. Likewise, the proposed change to formally require visual inspection of containment sumps every refueling outage specifically reduces the potential for foreign debris in the sumps which could lead to pump and/or associated system performance degradation. Therefore, a significant increase in the probability or consequences of an accident has not been created by these proposed changes.

2) The implementation of these proposed changes [does] not create a possibility for an accident or a malfunction of a different type than any evaluated previously in the UFSAR. Pump testing continues in accordance with ASME Section XI requirements and current NRC approved practices. [Inasmuch] as the proposed changes only define surveillance testing requirements, they do not create new or different kinds of accidents. Additionally, the proposed change for sump visual inspections is specifically made to preclude the possibility of system degradation associated with foreign debris which may result in a malfunction different than that previously evaluated.

3) The implementation of these proposed changes [does] not significantly reduce the margin of safety as defined in the basis of any Technical Specification. Testing and operability requirements are established in accordance with ASME Section XI and the Technical Specifications. No assumptions used in the UFSAR Chapter 14 accident analysis are affected by these proposed changes.

Based on the staff's review of the licensee's analysis, the staff agrees with the licensee's conclusions as stated above. Therefore, the staff proposes to determine that the proposed amendments do not involve significant hazards considerations.

*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

**Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin**

*Date of amendments request:* March 17, 1989

*Description of amendments request:* The amendment would revise Technical Specification 15.2.3.1.B(5) to eliminate the f-delta-I function (function of neutron flux difference between upper and lower core) from the overpower delta-T (OPDT) setpoint to increase the flexibility of operation at full power by allowing use of the full flux difference operating envelope. The request would also change the associated TS bases for this specification.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92. 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 consequence 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 the margin of safety.

The proposed amendment would remove the f-delta-I function from the OPDT setpoint described in TS 15.2.3.1.B(5) to increase the flexibility of plant operation at full power. Additionally, the associated TS bases for this specification would be modified to remove the correction for axial power distribution, since the setpoint would no longer require this correction.

The design bases of the OPDT are presented in the report WCAP-8745-P-A, "Design Bases for the Thermal Overpower Delta-T and the Thermal Overtemperature Delta-T Trip Functions," dated September 1986. This report was accepted for referencing by the NRC in a safety evaluation dated April 17, 1986. The licensee references this report in its evaluation of the proposed no significant hazards consideration.

The proposed amendment revising the OPDT setpoint calculation will not significantly increase the probability or consequences of an accident previously analyzed. The OPDT setpoint helps to ensure that the core safety limits are not violated. These limits are used to determine the acceptability of the consequences of certain design basis events and as such have no effect on the probability of those events occurring. Analysis of Condition II events for control bank and dilution/boration system malfunctions without the f-delta-I penalty included in the OPDT setpoint confirmed that the resulting overpower conditions did not yield a linear power density that would cause fuel centerline melting. The core safety limits will not be adversely impacted and there will be no significant increase in the consequences of a previously evaluated accident.

The proposed amendment does not involve any physical modifications to the Point Beach nuclear cores, but instead involves a minor change to the OPDT setpoint calculation. Therefore, the proposed change cannot create the possibility for a new or different kind of accident from any accident previously evaluated.

The proposed change will not alter the core safety limits, and analysis has shown that the core safety limits will not be exceeded as a result of the change. The purpose of the OPDT setpoint is to ensure that the core safety limits prevent fuel centerline melting. The removal of the f-delta-I from the setpoint equation will not impact this purpose. Therefore, this does not involve a significant reduction in the margin of safety.

Based on the above information, the staff proposes to determine that the proposed change to the TS does not involve a significant hazards consideration.

*Local Public Document Room location:* Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John N. Hannon.

**Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of amendment request:* April 13, 1989

*Description of amendment request:* The license amendment request proposes to revise Technical Specifications 3.1.3.4 and Figure 3.1-1 to change the fully withdrawn position of the Rod Cluster Control Assemblies for Wolf Creek Generating Station to a range of 222 to 231 steps inclusive. Wolf Creek Generating Station (WCGS) Technical Specifications require all shutdown rods to be fully withdrawn and all control rod banks to be withdrawn in accordance with Figure 3.1-1. Past operational history at WCGS has shown that long periods of operation with the control rods withdrawn to 228 steps has led to control rod wear by fretting against the upper internals guide surface due to flow induced vibration. In order to minimize the effect of this control rod wear, axial repositioning of the control

rods can be used to eliminate further degradation at locations where control rod wear has been observed. This Technical Specification change would allow axial repositioning between 222 steps and 231 steps withdrawn.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards considerations using the Commission's standards.

This license amendment request will allow axial repositioning of the control rods to minimize the effect of control rod wear by eliminating further degradation at locations at which wear has been observed. The probability and consequences of accidents and transients previously evaluated in the Updated Safety Analysis Report, including LOCA and non-LOCA events, have been evaluated and/or reanalyzed and are not affected by the proposed changes. Therefore, the proposed changes would not involve an increase in the probability of occurrence of an accident previously evaluated.

The proposed Technical Specification changes do not create any new failure modes from those assumed in the accident analyses. The accidents assumed to occur at the previous fully withdrawn position are the same as those for the proposed position range of 222 to 231 steps. No changes to the operation of the control rod drive mechanism are associated with the change. Therefore, the possibility of a new or different kind of accident would not be created by the proposed changes.

The proposed Technical Specification changes do not affect the rod drop time limit or the control rod bank and rod insertion limits. The affected safety analyses have been evaluated, and it has been determined that all applicable safety criteria are met with no significant adverse affects on analyses results. Therefore, the margin of safety as defined by the USAR, safety analyses, and the Technical Specification Bases would not be significantly reduced.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

*Local Public Document Room Location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* Jose A. Calvo

**Yankee Atomic Electric Company Docket No. 50-029 Yankee Nuclear Power Station, Franklin County, Massachusetts**

*Date of application for amendment:* April 14, 1989.

*Description of amendment request:* The proposed amendment is a completely new section of the Control Room Emergency Air Cleaning System technical specification.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequence of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the April 14, 1989 letter states the following:

This change is requested in order to ensure, through operability and surveillance requirements, the enhanced protection afforded Control Room personnel by the Control Room Emergency Air Cleaning System (CREACS). In submitting the CREACS single filter train conceptual design to the USNRC, by letters dated February 4, 1982, and February 26, 1982, additional provisions were provided to ensure the reliability of the Filter System. These provisions provided for both a quick filter change-out capability as well as having on hand an entire filter media reload. Given these additional provisions, the USNRC found the design of Yankee's CREACS to be acceptable in their letter of May 28, 1982.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The enhanced protection afforded Control Room personnel would further assure their ability to mitigate such accidents.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The operational and surveillance requirements of the proposed change will not affect the Control Room environment, thereby assuring the continued operation of both personnel and equipment and thus will not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety. The proposed change shall assure the margin of safety afforded Control Room personnel is maintained through its operability and surveillance requirements.

Based on the consideration contained herein, it is concluded that there is reasonable assurance that operation of the Yankee plant, consistent with the proposed Technical Specification, will not endanger the health and safety of the public. This proposed change has been reviewed by the Nuclear Safety Audit and Review Committee.

Based on the discussion above, it is concluded that there is reasonable assurance that operation of the Yankee plant, consistent with the proposed Technical Specifications, will not endanger the health and safety of the public. The proposed change has been reviewed by the Nuclear Safety Audit and Review Committee.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make a no significant hazards consideration determination.

*Local Public Document Room location:* Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

*Attorney for licensee:* Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

*NRC Project Director:* Richard H. Wessman

## PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the

biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

**Arkansas Power & Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit 1, (ANO-1) Pope County, Arkansas**

*Date of amendment request:* April 24, 1989

*Brief description of amendment request:* The amendment would change the ANO-1 license condition to increase the authorized steady state reactor core power levels to a maximum of 2054 megawatts thermal (80% of full power).

*Date of publication of individual notice in* **Federal Register:** April 28, 1989 (54 FR 18365)

*Expiration date of individual notice:* Comment period expired May 15, 1989; Notice period expires May 30, 1989.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

**Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois**

*Date of amendment request:* April 17, 1989

*Brief description of amendment:* This amendment is being proposed in accordance with Generic Letter 85-09, entitled "Technical Specifications for Generic Letter 83-28, Items 4.3," to change Tables 3.1-1 and 4.1-1 of Technical Specifications for Zion Station. The proposed changes involve addition and/or clarifications to the operability and surveillance requirements for: (1) Manual Reactor Trip; (2) Automatic Reactor Trip Logic; and (3) Reactor Trip and Bypass Breakers.

*Date of publication of individual notice in* **Federal Register:** April 28, 1989 (54 FR 18367)

*Expiration date of individual notice:* May 30, 1989

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of amendment request:* February 17, 1987, as supplemented Novebmer 19, 1987, and April 1 and October 3, 1988

*Brief description of amendment request:* The proposed amendments would make editorial, administrative, or other minor changes to add clarification, consistency, and conciseness to the Technical Specifications.

*Date of publication of individual notice in* **Federal Register:** May 4, 1989 (54 FR 19268)

*Expiration date of individual notice:* June 5, 1989

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

**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:* March 9, 1987, as revised March 20, 1989.

*Brief description of amendment request:* The proposed amendments would relocate fire protection requirements from the operating licenses and the Technical Specifications to the Final Safety Analysis Report.

*Date of publication of individual notice in* **Federal Register:** May 4, 1989 (54 FR 19266)

*Expiration date of individual notice:* June 5, 1989

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

**Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania**

*Date of amendment request:* February 14, 1986

*Brief description of amendment request:* The amendment would make administrative changes to the Technical Specifications (TS) to achieve consistency, remove outdated material, make minor text changes, and correct errors.

*Date of publication of individual notice in* **Federal Register:** April 27, 1989 (54 FR 18176)

*Expiration date of individual notice:* May 30, 1989

*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 amendment request:* October 17, 1986

*Brief description of amendment request:* Delete certain thermal effluent monitoring requirements from the Environmental Technical Specifications in view of the issuance of the National Pollutant Discharge Elimination System (NPDES) permit by the Commonwealth of Pennsylvania.

*Date of publication of individual notice in* **Federal Register:** April 27, 1989 (54 FR 18179)

*Expiration date of individual notice:* May 30, 1989

*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 amendment request:* December 18, 1986

*Brief description of amendment request:* The proposed amendment would revise the Action Statements for the Reactor Trip System for Modes 3, 4 and 5 with the reactor trip breakers closed and would explicitly address the operable requirements of the diverse trip features as requested in Generic Letter 85-09.

*Date of publication of individual notice in* **Federal Register:** April 27, 1989 (54 FR 18183)

*Expiration date of individual notice:* May 30, 1989

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

**Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California**

*Date of amendment request:* June 10, 1988, as revised January 11, 1989

*Brief description of amendment:* The proposed amendment would revise Technical Specifications (TS) 4.21, "Liquid Effluents," TS 4.22 "Gaseous Effluents," and TS 4.26, "Radiological Environmental Monitoring," to effect operational enhancements to the liquid

radiological effluent technical specifications.

*Date of publication of individual notice in* **Federal Register:** April 24, 1989 (54 FR 16438)

*Expiration date of individual notice:* May 24, 1989

*Local Public Document Room location:* Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822

**Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin**

*Date of application for amendment:* May 23, 1986

*Brief description of amendment request:* The amendment would change the expiration date for the Kewaunee Plant Operating License from August 6, 2008, to December 21, 2013. The Technical Specifications for the plant would not be affected.

*Date of individual notice in* **Federal Register:** April 25, 1989 (54 FR 17849).

*Expiration date of individual notice:* May 25, 1989.

*Local Public Document Room location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

## NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No 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.

**Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.**

*Date of application for amendments:* December 14, 1988, as supplemented April 6, 1989.

*Description of amendments:* The amendments change the Technical Specifications to incorporate provisions for the reactor vessel level indicating system (RVLIS) into TS 3/4.3.3.8, "Accident Monitoring Instrumentation." In addition, an editorial change has been made for Unit 1 to remove the one-time change approved in Amendment No. 34.

*Date of issuance:* May 4, 1989

*Effective date:* May 4, 1989

*Amendment Nos.:* 80 and 72

*Facility Operating License Nos. NPF-2 and NPF-8.* Amendments revise the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 11, 1989 (54 FR 1019). The April 6, 1989 letter provided clarifying information that did not change the initial determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 4, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

**Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas**

*Date of applications for amendment:* December 12, 1986

*Brief description of amendment:* The amendment eliminates the Arkansas Nuclear One, Unit 2 Technical Specifications which required plant shutdown upon the occurences of iodine spikes in the reactor coolant. It also modifies reporting requirements for such iodine spikes in accordance with Generic Letter 85-19.

*Date of issuance:* April 24, 1989

*Effective date:* April 24, 1989

*Amendment No.:* 92

*Facility Operating License No. NPF-6.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 20, 1987 (52 FR 18973). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

**Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas**

*Date of applications for amendment:* December 12, 1986

*Brief description of amendment:* The amendment deletes a condition in the Arkansas Nuclear One, Unit 2 license which required the licensee to complete verification tests for the Combustion Engineering Systems Excursion Code (CESEC).

*Date of issuance:* April 25, 1989

*Effective date:* April 25, 1989

*Amendment No.:* 93

*Facility Operating License No. NPF-6.* Amendment revised the operating license.

*Date of initial notice in* **Federal Register:** May 20, 1987 (52 FR 18972). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

**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 3, 1987

*Description of amendment request:* The amendments changed the Technical Specifications to require the use of the Banked Position Withdrawal Sequence (BPWS) as the Rod Worth Minimizer (RWM) Control Rod Program in Technical Specification (TS) 3/4.1.4 "Control Rod Program Controls." In addition, the word "Operational" was placed before the word "Condition" in TS 3/4.1.4.

*Date of issuance:* April 19, 1989

*Effective date:* April 19, 1989

*Amendment Nos.:* 127 and 157

*Facility Operating License Nos. DPR-71 and DPR-62.* Amendments revise the Technical Specifications.

*Date of initial notice in* **Federal Register:** The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 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:* October 24, 1984, as supplemented February 27, 1985, July 8, 1985 and March 17, 1987.

*Description of amendments:* The amendments change the limiting condition for operation (LCO) and surveillance requirements for TS 3/4.6.1.3, Primary Containment Air Locks, to address the air lock door interlocks specifically. Additionally, the Technical Specifications (TS) for air locks would be reformatted to follow more closely the guidance of NUREG-0123, Standard Technical Specifications.

*Date of issuance:* April 25, 1989

*Effective date:* April 25, 1989

*Amendment Nos.:* 128 and 158

*Facility Operating License Nos. DPR-71 and DPR-62.* Amendments revise the Technical Specifications.

*Date of initial notices in* **Federal Register:** March 27, 1985 (50 FR 12139); August 27, 1985 (50 FR 34934); and September 23, 1987 (52 FR 35786). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 25, 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:* September 19, 1988

*Description of amendments:* The amendments revise the action associated with TS 3/4.6.4 (Drywell Suppression Chamber - Vacuum Breakers) to clarify the alternative actions to be taken if the existing actions cannot be taken. Specifically, existing action 3.6.4.1.d will be incorporated into actions 3.6.4.1.a, 3.6.4.1.b., and 3.6.4.1.c and present action 3.6.4.1.d will be deleted, to clarify that in the event any of these action statements apply, the unit will be placed in hot shutdown within twelve hours and in cold shutdown within the next twenty-four hours.

*Date of issuance:* April 24, 1989

*Effective date:* April 24, 1989

*Amendment Nos.:* 129 and 159

*Facility Operating License Nos. DPR-71 and DPR-62.* Amendments revise the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 8, 1989 (54 FR 9915). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 24, 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 No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina**

*Date of application for amendment:* January 4, 1989

*Brief description of amendment:* The amendment changes to the Shearon Harris Nuclear Power Plant, Unit 1 (Harris), Technical Specifications (TS), Section 3.3.3.7, "Chlorine Detection Systems," Limiting Condition for Operation (LCO) and the associated Surveillance Requirement (SR) 4.7.6.d.5. The proposed amendment deletes TS 3.3.3.7, "Chlorine Detection Systems," LCO and the associated SR 4.7.6.d.5. The requested change is based on the removal of onsite liquid chlorine in substantial quantities and the low probability of accidental release of chlorine gas from transported offsite sources.

*Date of issuance:* May 3, 1989

*Effective date:* May 3, 1989

*Amendment No.:* 10

*Facility Operating License No. NPF-63.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 22, 1989 (54 FR 7626). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 3, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

**Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois; Docket Nos. 50-456 and 50-457, Braidwood Station Units 1 and 2, Will County, Illinois**

*Date of application for amendments:* February 17, 1989

*Brief description of amendments:* These amendments remove the organizational figures from the Technical Specifications, change several position titles, clarify the distribution requirements for onsite reviews, and correct several typographical and editorial errors.

*Date of issuance:* April 24, 1989

*Effective date:* April 24, 1989

*Amendment Nos.:* 27 for Byron and 16 for Braidwood

*Facility Operating License Nos. NPF-37, NPF-66, NPF-72, and NPF-77:* The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 15, 1989 (54 FR 10759). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 24, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* For Byron Station, the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

**Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Unit Nos. 1 and 2, LaSalle County, Illinois**

*Date of application for amendments:* February 17, 1989

*Brief description of amendments:* These amendments revise the LaSalle County Station, Units 1 and 2 Technical Specifications by changes to the Administrative Controls Section 6.0 to include 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 issuance:* April 27, 1989

*Effective date:* April 27, 1989

*Amendment Nos.:* 66 and 47

*Facility Operating License Nos. NPF-11 and NPF-18.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 15, 1989 (54 FR 10762). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 27, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

**Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois and Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois**

*Date of application for amendments:* February 17 and 21, 1989 and supplemented March 20, 1989.

*Brief description of amendments:* These amendments delete the organization charts from Technical Specifications (TS) in accordance with guidance given by Generic Letter 88-06. Additionally, on-site and off-site position titles, descriptions, responsibilities, and lines of authority identified in TS Section 6 were revised to reflect CECo's planned reorganization.

*Date of issuance:* April 26, 1989

*Effective date:* April 26, 1989

*Amendment Nos.:* 117 and 113 for Quad Cities and 105 and 100 for Dresden

*Facility Operating License Nos. DPR-29, DPR-30, DPR-19 and DPR-25:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 15, 1989 (54 FR 10761). The Commission s related evaluation of these amendments is contained in a Safety Evaluation dated April 26, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021 and Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

**Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois**

*Date of application for amendments:* February 22, 1989, supplemented March 22, 1989.

*Brief description of amendments:* These amendments revise Administrative Controls Section of the Technical Specifications for Zion units to reflect the guidance provided by Generic Letter 88-06 and the recent corporate and station reorganizations.

*Date of issuance:* April 27, 1989

*Effective date:* April 27, 1989

*Amendment Nos.:* 115 and 104

*Facility Operating License Nos. DPR-39 and DPR-48.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 15, 1989 (54 FR 10764). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 27, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

**Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut**

*Date of application for amendment:* December 2, 1986, as supplemented November 17, 1987, October 12, 1988 and January 24, 1989.

*Brief description of amendment:* The amendment modified paragraph 2.C.(5) of the license to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 160 days from the effective date of this amendment.

*Date of Issuance:* April 21, 1989

*Effective date:* April 21, 1989

*Amendment No.:* 113

*Facility Operating License No. DPR-61.* Amendment revised the License.

*Date of initial notice in* **Federal Register:** March 22, 1989 (54 FR 11835). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 21, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

**Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut; Northeast Nuclear Energy Company et al, Docket Nos. 50-245/336/423, Millstone Nuclear Power Station Unit Nos. 1, 2, and 3, New London County, Connecticut**

*Date of application for amendment:* January 12, 1989

*Brief description of amendment:* The amendment to the Technical Specifications (TS) adds a new requirement to TS Section 6.7, "Safety Limit Violation." This requirement will state that if any safety limit is exceeded "operation shall not be resumed until authorized by the Commission." This change makes the TS for the four plants consistent with the requirements of 10 CFR 50.36, "Technical Specifications."

In addition, an amendment to the Millstone Unit No. 3 TS changes the requirement for auditing TS compliance from all provisions in each section to provision in each section, each year, during the five-year audit cycle for this plant. This change will make the Millstone Unit No. 3 TS consistent with the TS of the other three plants.

*Date of Issuance:* April 25, 1989

*Effective date:* April 25, 1989

*Amendment Nos.:* 114, 30, 141, 33

*Facility Operating License No. DPR-61, DPR-21, DPR-65, and NPF-49.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 8, 1989 (54 FR 6187). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 25, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Russell Library, 123 Broad Street, Middletown, Connecticut 06457 and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

**Dairyland Power Cooperative, Docket No. 50-409, La Crosse Boiling Water Reactor, La Crosse, Wisconsin**

*Date of application for amendment:* December 21, 1987 as revised February 22, 1988, October 13, 1988 and February 15, 1989.

*Brief description of amendment:* This amendment revises the Technical Specifications (TS) for fuel storage for the diesel fire pumps. The revised TS will require 150 gallons of fuel for each of two fire pump diesel engine.

*Date of issuance:* April 26, 1989

*Effective date:* April 26, 1989

*Amendment No.:* 65

*Possession-Only License No. DPR-45.* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 8, 1988 (53 FR 11718). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 1989.

*Local Public Document Room location:* La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

**Detroit Edison Company, Docket No. 50-16, Fermi Unit No. 1, Monroe, Michigan**

*Date of application for amendment:* May 17, 1985 as supplemented by letters dated July 23, 1986, September 15, 1986, September 25, 1987, September 15, 1988 and December 22, 1988.

*Brief description of amendment:* This amendment renews Possession-Only License No. DPR-9 until March 20, 2025 and revises Technical Specifications to be consistant with current defueled, SAFSTOR status of Fermi 1 and current NRC rules and guidance. Continued SAFSTOR until 2025 will significantly reduce potential exposure to workers and the amount of radioactive waste produced during final decontamination of the facility.

*Date of issuance:* April 28, 1989

*Effective Date:* April 28, 1989

*Amendment No.:* 9

*Possession-Only License No. DPR-9*

*Date of initial notice in* **Federal Register:** November 7, 1985 (50 FR 46371). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Monroe County Library System, 13700 South Custer Road, Monroe, Michigan 48161.

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* May 14, 1986, as supplemented November 21, 1986, and revised April 25, 1988, and April 5, 1989

*Brief description of amendments:* The amendments modify the Technical Specifications by deleting tables of containment penetrations and isolation valves which have been incorporated into the Final Safety Analysis Report.

*Date of issuance:* April 28, 1989

*Effective date:* April 28, 1989

*Amendment Nos.:* 74 and 76

*Facility Operating License Nos. NPF-9 and NPF-17:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 22, 1989 (54 FR 7631). Because the April 5, 1989, submittal clarified certain aspects of the original request, the substance of the changes noticed in the **Federal Register** and the proposed no significant hazards determination were not affected. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 28, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

**Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania**

*Date of application for amendment:* January 30, 1989, as supplemented March 9, 1989.

*Brief description of amendment:* The amendment revises the license conditions regarding the plant safety monitoring system, detailed control room design review and safety parameter display system by changing the full implementation date of certain issues from the first refueling outage to the second refueling outage.

*Date of issuance:* April 26, 1989

*Effective date:* April 26, 1989

*Amendment No.:* 16

*Facility Operating License No. NPF-73.* Amendment revised the operating license.

*Date of initial notice in* **Federal Register:** March 8, 1989 (54 FR 9917). The licensee's letter dated March 9, 1989 provides detailed information about the requested changes, and does not alter the original request. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia**

*Date of application for amendment:* January 23, 1989

*Brief description of amendment:* The amendment modified the Technical Specifications to allow Type C local leak rate tests to be conducted on the main steam isolation valves at intervals not to exceed two years and to specify the test pressure.

*Date of issuance:* April 28, 1989

*Effective date:* April 28, 1989

*Amendment No.:* 99

*Facility Operating License No. NPF-5.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 8, 1989 (54 FR 9917). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

**GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey**

*Date of application for amendment:* July 24, 1986 as revised February 19, 1988 and supplemented October 13 and November 16, 1988 and January 12, 1989.

*Brief description of amendment:* The amendment changes Technical Specifications 3.5.A.3 and 4.5 for containment integrated leak rate testing to reflect compliance with Appendix J to 10 CFR 50.

*Date of Issuance:* April 24, 1989

*Effective date:* April 24, 1989

*Amendment No.:* 132

*Provisional Operating License No. DPR-16.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 13, 1986 (51 FR 29023) and March 22, 1989 (54 FR 11838). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 24, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

**GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania**

*Date of application for amendment:* December 2, 1988, December 19, 1988 and January 31, 1989.

*Brief description of amendment:* This amendment consolidates a number of minor administrative changes requested by the licensee to make the Technical Specifications consistent with changes to NRC regulations, plant procedures, previous amendments and NRC guidance.

*Date of Issuance:* April 27, 1989

*Effective date:* April 27, 1989

*Amendment No.:* 149

*Facility Operating License No. DPR-50.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 22, 1989 (54 FR 7636) and March 8, 1989 (54 FR 9917). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 27, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

**Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County Illinois**

*Date of application for amendment:* January 26, 1989

*Description of amendment request:* The proposed change will revise a core flow and thermal power surveillance for single loop operation.

*Date of issuance:* April 20, 1989

*Effective date:* April 20, 1989

*Amendment No.:* 22

*Facility Operating License No. NPF-62.* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 8, 1989 (54 FR 9918). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa**

*Date of application for amendment:* September 15, 1986.

*Brief description of amendment:* The amendment revised the Duane Arnold Energy Center Technical Specification requirements related to jet pump operability. The revision implements the improved monitoring guidelines contained in General Electric Service Information Letter No. 330, "Jet Pump Beam Cracks," June 9, 1980.

*Date of issuance:* April 28, 1989

*Effective date:* April 28, 1989

*Amendment No.:* 158

*Facility Operating License No. DPR-49.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 20, 1987 (52 FR 18982). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa**

*Date of application for amendment:* April 24, 1987.

*Brief description of amendment:* The amendment modified the Duane Arnold Energy Center Technical Specifications to conform with the model Radiological Effluent Technical Specifications for Boiling Water Reactors (NUREG-0473, Revision 2). The changes made were administrative in nature and did not affect the technical content or intent of the previous specifications.

*Date of issuance:* April 28, 1989

*Effective date:* April 28, 1989

*Amendment No.:* 159

*Facility Operating License No. DPR-49.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 23, 1989 (54 FR 12034). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

**Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* December 23, 1988

*Brief description of amendment:* The amendment revised the Technical Specifications to incorporate the correct operating range for the Containment Area Radiation Monitors and clarify the radiation background setpoint for containment purge and exhaust isolation.

*Date of issuance:* May 2, 1989

*Effective date:* May 2, 1989

*Amendment No.:* 55

*Facility Operating License No. NPF-38.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 1, 1989 (54 FR 5163). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 2, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of application for amendment:* February 3, 1989

*Brief description of amendment:* The Moderator Temperature Coefficient (MTC) limit in Technical Specifications between the 0% and 30% power levels. The new limit is a line from $0.6 \times 10^{-4}$ delta rho per ° F at 0% power to the current limit of $0.5 \times 10^{-4}$ delta rho per ° F at 30% power. The MTC limit above 30% power is unchanged.

*Date of issuance:* April 24, 1989

*Effective date:* April 24, 1989

*Amendment No.:* 111

*Facilty Operating License No. DPR-36:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 22, 1989 (54 FR 11839). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Wiscasset Public Library, High Street, P.O.Box 367, Wiscasset, Maine 04578.

*Attorney for licensee:* J. A. Ritsher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

*NRC Project Director:* R. Wessman

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of application for amendment:* February 15, 1989

*Brief description of amendment:* This amendment modifies the Technical

Specification Table 3.9-3, Accident Monitoring Instrumentation, and Table 4.1-3, to add the Primary Inventory Trend System for reactor vessel level indication and core exit thermocouples channel operability and surveillance requirements to the Technical Specifications. Also, minor editorial changes are proposed to Tables 3.9-3 and 4.1-3 of the Technical Specifications.

*Date of issuance:* April 24, 1989
*Effective date:* April 24, 1989
*Amendment No.:* 112
*Facility Operating License No. DPR-36:* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** March 22, 1989 (5411840). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1989.
*No signficant hazards consideration comments received:* No
*Local Public Document Room location:* Wiscasset Public Library, High Street, P. O. Box 367, Wiscasset, Maine 04578.
*Attorney for licensee:* J. A. Ritsher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.
*NRC Project Director:* R. Wessman

**Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut**

*Date of application for amendment:* January 24, 1989
*Brief description of amendment:* Clarification of emergency core cooling system availability and power supply requirements and editorial corrections to technical specifications.
*Date of issuance:* May 2, 1989
*Effective date:* May 2, 1989
*Amendment No.:* 31
*Facility Operating License No. DPR-21.* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** March 31, 1989 (54 FR 13259). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 2, 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. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut**

*Date of application for amendment:* October 14, 1986, July 21, 1982 and January 12, 1989.
*Brief description of amendment:* This amendment incorporates Limiting Conditions for Operation and Surveillance Requirements for the Reactor Vessel Coolant Level instrumentation in Technical Specification 3/4.3.3.8, "Instrumentation - Accident Monitoring."
*Date of issuance:* April 21, 1989
*Effective date:* April 21, 1989
*Amendment No.:* 140
*Facility Operating License No. DPR-65.* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** February 8, 1989 (54 FR 6200). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 1989.
*No significant hazards consideration comments received:* No.
*Local Public Document Room location:* Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

**Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska**

*Date of amendment request:* January 6, 1989
*Brief description of amendment:* This amendment modifies the Technical Specifications (TS) to (1) change the containment spray system surveillance testing requirements to provide a quantitative value to define the minimum acceptance criteria, (2) change the Basis of the containment spray system surveillance requirements by providing the minimum spray flow requirements determined from analysis, (3) reduce the maximum power level permitted on Figure 2-7, Limiting Condition for Operation for Departure from Nucleate Boiling Monitoring, (4) correct the neutron fluence value stated as occurring at 14 Effective Full Power Years (EFPY) at the inner surface of the reactor vessel wall at the critical weld location from $1.4 \times 10^{19}$ n/cm$^2$ to $1.21 \times 10^{19}$ n/cm$^2$, (5) revise Figure 2-3, Predicted Radiation Induced NDTT Shift, based on calculations using US NRC Regulatory Guide 1.99, Revision 2, and (6) changing the references in TS 3.6 from "FSAR" to "USAR" and adding an additional reference to USAR Section 14.16.
*Date of issuance:* April 26, 1989
*Effective date:* Full implementation within 30 days from the date of issuance.
*Amendment No.:* 121
*Facility Operating License No. DPR-40.* This amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** February 22, 1989 (54 FR 7638). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 1989.
*No significant hazards consideration comments received:* No.
*Local Public Document Room location:* W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

**Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California**

*Date of application for amendments:* December 24, 1986 (Reference LAR 86-13)
*Brief description of amendments:* The amendments revised Technical Specification (TS) by (1) revising the surveillance intervals for certain reactor trip system and engineered safety features actuation system instrumentation, and (2) deleting the requirement to obtain and evaluate detector plateau curves for the intermediate and power range neutron flux channels.
*Date of issuance:* April 25, 1989
*Effective date:* April 25, 1989
*Amendment Nos.:* 36 and 35
*Facility Operating License Nos. DPR-80 and DPR-82:* Amendments changed the Technical Specifications.
*Date of initial notice in* **Federal Register:** August 12, 1987 (52 FR 29926). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 25, 1989.
*No significant hazards consideration comments received:* No.
*Local Public Document Room location:* California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.
*NRC Project Director:* George W. Knighton

**Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania.**

*Date of application for amendment:* January 27, 1989 as supplemented March 22, 1989
*Brief description of amendment:* The amendment changed the Technical Specifications to accommodate the second refueling of the reactor which involves the use of new, previously irradiated and reconstituted fuel assemblies.
*Date of issuance:* April 24, 1989
*Effective date:* April 24, 1989
*Amendment No.:* 19

*Facility Operating License No. NPF-39.* This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 22, 1989 (54 FR 7642). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

**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:* November 27, 1985 and supplemented February 15, 1989

*Brief description of amendments:* The amendments modified the containment containment isolation valve table, Technical Specification Table 3.6-1. The licensee has withdrawn a request to modify the limiting condition of operation involving these valves.

*Date of issuance:* April 24, 1989

*Effective date:* Units 1 and 2, effective as of the date of issuance and to be implemented within 30 days of the date of issuance.

*Amendment Nos.:* 92 and 67

*Facility Operating License Nos. DPR-70 and DPR-75.* These amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** July 2, 1986 (51 FR 24261). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 24, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

**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:* April 14, 1987 and supplemented on October 10, 1988.

*Brief description of amendments:* Deleted snubber tables from the Technical Specifications.

*Date of issuance:* May 1, 1989

*Effective date:* May 1, 1989

*Amendment Nos.:* 93 and 68

*Facility Operating License Nos. DPR-70 and DPR-75.* These amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 8, 1989 (54 FR 9927). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 1, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

**Public Service Electric & Gas Company, Docket No. 50-311, Salem Generating Station, Unit No. 2, Salem County, New Jersey**

*Date of application for amendment:* January 27, 1983 and supplemented on January 3, 1986 and January 5, 1987. The supplements did not change the technical requirements of the amendment request.

*Brief description of amendment:* Established system operability requirements for the transfer functions of the emergency core cooling system (ECCS) semiautomatic switchover from safety Injection to Recirculation during a loss of coolant accident (LOCA).

*Date of issuance:* May 1, 1989

*Effective date:* Before startup from the fifth refueling outage currently scheduled for March 1990.

*Amendment No.:* 69

*Facility Operating License No. DPR-75:* This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 2, 1983 (48 FR 35055). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 1, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

**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:* July 23, 1987 as supplemented by letter dated March 16, 1989

*Brief description of amendments:* Revised the Emergency Core Cooling System Technical Specifications and Bases.

*Date of issuance:* May 2, 1989

*Effective date:* May 2, 1989

*Amendment Nos.:* 94 and 70

*Facility Operating License Nos. DPR-70 and DPR-75.* These amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 8, 1989 (54 FR 9928). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 2, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

**Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York**

*Date of application for amendment:* February 16, 1989.

*Brief description of amendment:* This amendment revises the Technical Specifications to reflect the addition of steam generator sleeving and plugging criteria.

*Date of issuance:* April 24, 1989

*Effective date:* April 24, 1989

*Amendment No.:* 35

*Facility Operating License No. DPR-35:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 22, 1989 (54 FR 11842). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

**Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California**

*Date of application for amendment:* December 12, 1988

*Brief description of amendment:* The amendment revised the Technical Specification 4.11, "Reactor Building Purge Exhaust Filtering System," by changing the air flow rate through the reactor building purge valves, adding a requirement to test the Reactor Building Purge Exhaust HEPA filters, and clarifying in the bases the air flow rate difference with or without containment integrity.

*Date of issuance:* April 18, 1989

*Effective date:* April 18, 1989

*Amendment No.:* 103

*Facility Operating License No. DPR-54:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 26, 1987 (52 FR 32210). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Martin Luther King Regional

Library, 7340 24th Street Bypass, Sacramento, California 95822.

*NRC Project Director:* George W. Knighton

**South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina**

*Date of application for amendment:* September 16, 1986, as supplemented on August 18, 1987, July 22, and September 29, 1988.

*Brief description of amendment:* The amendment changes the Technical Specifications (TS) to delete Tables 4.6-1a, 4.6-1b, and 4.6-2 from TS 3/4.6.1.6, "Containment Structural Integrity," to reduce the minimum required average tendon force for each tendon group, and to modify the tendon force base values. Also, associated TS Bases for the reactor building structural integrity are amplified to refer to the Summer Nuclear Station Surveillance Test Procedure for base values. The proposed change to TS 4.6.1.6.1.a, to utilize 21 tendons rather than 15 tendons for the ten year surveillance and subsequent five year intervals, was denied.

*Date of issuance:* April 28, 1989

*Effective date:* April 28, 1989

*Amendment No.:* 76

*Facility Operating License No. NPF-12.* Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 5, 1986 (51 FR 40282). The August 18, 1987, July 22 and July 29, 1988 submittals provided clarifying information that did not change the initial determination of no significant hazards consideration published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendments:* June 10, 1987 (TS 87-28)

*Brief description of amendments:* The amendments will transfer requirements from Section 3/4.3.3.1, "Radiation Monitoring Instrumentation," to Section 3/4.3.3.7, "Accident Monitoring Instrumentation," of the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specifications. These changes relate to the post-accident containment area monitors and noble gas effluent monitors. These monitors are addressed in Items II.F.1.3 and II.F.1.1, respectively, of NUREG-0737, "TMI Action Plan Requirements," dated November 1980. For the post-accident noble gas effluent monitors, requirements are being added to the TS. The amendment for Unit 1 also corrects a typographical error on Page 3/4.3-42: "Moses" should be "Modes."

This application superseded and withdrew the proposed changes on these monitors in the licensee's applications dated January 25, 1984 and December 9, 1985.

*Date of issuance:* April 28, 1989

*Effective date:* April 28, 1989

*Amendment Nos.:* 112, 102

*Facility Operating Licenses Nos. DPR-77 and DPR-79.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 21, 1987 (52 FR 39308). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

**The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio**

*Date of application for amendment:* November 28, 1988, amended December 29, 1988.

*Brief description of amendment:* The amendment revised the Technical Specifications (TS) to increase the minimum critical power ratio (MCPR) from 1.06 to 1.07, added two limiting lattice most-limiting average planar linear heat generation rate (MAPLHGR) curves to the TS to account for new fuel types being used this cycle, and deleted the MAPLHGR curve for natural uranium bundles. Additionally, limiting conditions for operation and action statements for the APLHGR were revised to reflect the lattice-dependent MAPLHGR limits in the GESTAR analysis and the default limits in the TS for hand calculations. Figure 3.2.2-1 was revised to correct the extrapolated value for the flow-dependent MCPR and Figure 3.2.1-4 was revised to extend the flow-dependent MAPLHGR factor down to the 20% rated core flow line. Curves A-A' and B-B' were deleted from the current set of MCPR parametric curves and the TS for linear heat generation rate (LHGR) was revised to reflect the higher LHGR associated with the new fuel. The definition of "critical power ratio" was generalized and clarification of how power-dependent MAPLHGR factors are applied to lattice MAPLHGR's was added. Various figures and pages were renumbered and the associated bases for the above TS changes were revised.

*Date of issuance:* April 26, 1989

*Effective date:* April 26, 1989

*Amendment No.:* 20

*Facility Operating License No. NPF-58.* This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 1, 1989 (54 FR 5177). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Perry Public Library, 3753 Main Street, Perry, Ohio 44081

**Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio**

*Date of application for amendment:* June 17, 1985

*Brief description of amendment:* The amendment revised the Technical Specification 3.7.1.1 concerning the Limiting Condition for Operation for the main steam line safety valves. The change will require that when main steam safety valves are inoperable that the plant go to Mode 4 (hot shutdown) within 12 hours following entry to Mode 3 (hot standby), rather than to Mode 5 (cold shutdown).

*Date of issuance:* April 25, 1989

*Effective date:* April 25, 1989

*Amendment No.:* 132

*Facility Operating License No. NPF-3.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 23, 1988 (53 FR 9517). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

**Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont**

*Date of application for amendment:* November 18, 1988.

*Brief description of amendment:* The amendment revises the Technical Specifications (TS) to add limiting conditions for operation and surveillance requirements for the RCIC System and the HPCI System resulting from improvements required by NUREG-0737, Item II.K.3.13 and II.K.3.22.

*Date of issuance:* April 24, 1989

*Effective date:* April 24, 1989

*Amendment No.:* 111

*Facility Operating License No. DPR-28:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 22, 1989 (54 FR 11846). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1989.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

**Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.**

*Date of application for amendments:* July 29, 1988

*Brief description of amendments:* These amendments revise the Technical Specifications to include the downstream manual isolation valves in the demonstration of operability of the reactor head vent path.

*Date of issuance:* April 27, 1989

*Effective date:* April 27, 1989

*Amendment Nos.:* 125 and 125

*Facility Operating License Nos. DPR-32 and DPR-37:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 24, 1988 (53 FR 32301). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 27, 1989

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

**Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin**

*Date of application for amendments:* February 24, 1989 and supplemented on March 3, 1989.

*Brief description of amendments:* These amendments revise the permissible bypass conditions for item 3.b, "Auxiliary Feedwater," of Technical Specification Table 15.3.5-3, "Emergency Cooling."

*Date of issuance:* April 25, 1989

*Effective date:* April 25, 1989

*Amendment Nos.:* 119 and 122

*Facility Operating License Nos. DPR-24 and DPR-27.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 22, 1989 (54 FR 11847). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 25, 1989.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

**Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of amendment request:* November 7, 1986 and as amended on March 30, 1989.

*Brief description of amendment:* The purpose of the license amendment incorporated Technical Specification LCO and surveillance requirements for the steam generator Atmospheric Relief Valves (ARVs) into the Wolf Creek Operating License in order to assure the availability of mitigating equipment assumed in the Steam Generator Tube Rupture analysis. The Technical Specification requirements constitute additional limitations on facility operations and satisfy, in part, the specific requirements of License Condition 2.c(11) of the operating license. No requirements on ARV operability have been included in the existing Wolf Creek Technical Specifications because the ARVs have not been required in the mitigation of postulated accidents and transients.

*Date of Issuance:* April 20, 1989

*Effective date:* April 20, 1989

*Amendment No.:* 30

*Facility Operating License No. NPF-42.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 30, 1986 (51 FR 47080). The March 30, 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 April 20, 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

## NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public

comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By June 16, 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 Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 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 Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendments:* May 2, 1989 (TS 89-23)

*Brief description of amendments:* The amendments delete the remote shutdown instrumentation requirements for full-length, control rod position limit switches in Tables 3.3-9 and 4.3-6.

*Date of issuance:* May 4, 1989

*Effective date:* May 4, 1989

*Amendment Nos.:* 113, 103

*Facility Operating Licenses Nos. DPR-77 and DPR-79.* Amendments revised the Technical Specifications.

*Public comments requested as to proposed no significant hazards consideration:* No. The amendment application was processed on an emergency basis, pursuant to 10 CFR 50.91(a)(5). The Commission's related evaluation is contained in a Safety Evaluation dated May 4, 1989.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

*NRC Assistant Director:* Suzanne Black

Dated at Rockville, Maryland, this 11th day of May, 1989.

For the Nuclear Regulatory Commission

Gary M. Holahan,

*Acting Director, Division of Reactor Projects - III, IV, V and Special Projects Office of Nuclear Reactor Regulation*

[Doc. 89-11687 Filed 5-16-89; 8:45 am]

BILLING CODE 7590-01-D

## OFFICE OF PERSONNEL MANAGEMENT

### Personnel Management Demonstration Project: Alternative Personnel Management System at the National Institute of Standards and Technology

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of amendments of the National Institute of Standards and Technology (NIST; formerly National Bureau of Standards) demonstration project plan.

**SUMMARY:** This action provides for changes to the final project plan published October 2, 1987, to clarify certain authorities granted to NIST under the project. The notice makes four corrections of errors in the "Staffing" section, clarifies NIST's authority to reimburse new hires for relocation expenses, makes the definition of "promotion" more like the definition in the Federal Personnel Manual (FPM), and makes clear that removal of a supervisory differential upon giving up supervisory responsibilities does not constitute an adverse action.

**DATE:** Comments must be received on or before June 16, 1989.

**ADDRESS:** Send 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.

**FOR FURTHER INFORMATION CONTACT:** Allen Cassady, (301) 975-3031, at the National Institute of Standards and Technology; Paul R. Thompson, (202) 632-6164, at OPM.

**SUPPLEMENTARY INFORMATION:**

#### Background

On January 1, 1988, the National Institute of Standards and Technology (NIST) began a 5-year project to demonstrate an alternative personnel management system. The new system was mandated by Congress to improve the Institute's ability to motivate and retain staff and to attract and hire highly qualified candidates. NIST will also simplify personnel administration and give managers more authority and accountability for personnel management.

The major features and interventions of the project are total compensation comparison with the private sector, simplified position classification with delegation of authority and accountability to line managers, agency-based hiring, direct-hiring, recruiting and retention allowances, pay for performance, and supervisory pay differentials.

NIST will annually compare compensation for NIST positions with compensation for similar positions in the private sector and, to the extent allowed by budget limitations, will make up the net increase in the deficiency through an annual comparability pay increase for all employees rated "fully successful" or higher. In position classification, career paths and broad pay bands have replaced the General Schedule (GS) grade structure. NIST conducts its own hiring, rather than hiring through the Office of Personnel Management (OPM) registers, and fills most scientific and engineering vacancies through the direct-hire process. NIST management will grant recruiting and retention allowances up to $10,000 in special cases. Supervisors will determine pay increases within pay bands on the basis of performances appraisals. Supervisors and managers who would not otherwise be compensated for supervision or management will be given pay differentials.

#### Project Plan Modifications

The official NIST Project Plan appeared in the **Federal Register** on October 2, 1987 (52 FR 37082). In order to implement the plan fully, it is necessary to modify certain sections so that they express more clearly the intentions of OPM and NIST in designing the project.

In the "Staffing" section of the original plan, errors were made in describing appointment reports to OMB (none required), open-continuous applications (should be critical shortage occupations only), the career paths covered by the category of critical shortage highly-qualified candidates (should not include Support Career Path), and the approval authorities for the timing of Recruitment and Retention Allowances (the approval authority cited for Recruiting Allowances should have been cited instead for Retention Allowances, and the authority cited for Retention Allowances should have been cited for Recruiting Allowances).

The definition of "promotion" (52 FR 37091) has not proved practicable in its coverage of movements from one career path to another, because it differed too much from the traditional definition in the Federal Personnel Manual (FPM). The revised definition parallels the definition in the FPM. Also, the time-in-pay-band requirement one year for promotion eligibility was not made explicit. This Notice, therefore, changes the definition of "promotion" and adds the time-in-pay-band requirement to the same section.

The original project plan provides that new hires are eligible for reimbursement of travel expenses to first post of duty and relocation expenses "in the same manner as is authorized in sections 5723 and 5724 of title 5, U.S. Code" (52 FR 37091). It was intended that the authority cover all the facets of relocation expenses described in sections 5724a, 5724b, and 5724c of title 5, as well as those mentioned in the original plan. This notice amends the project plan to add specific reference to the three recipients to repay travel expenses when they separate prior to the end of their service agreements.

The project plan does not mention the process by which a supervisory pay differential is discontinued when the supervisory responsibilities are discontinued. This modification adds this process and makes clear that loss of a supervisory differential is not an adverse action and is therefore not subject to appeal.

Finally, all instances of "National Bureau of Standards," "NBS," and "Bureau" are changed to "National Institute of Standards and Technology," "NIST," and "Institute," respectively, in accordance with a provisioin of the Technology Competitiveness Act signed into law by the President on August 23, 1988.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

The demonstration project plan for the Alternative Personnel Management System at the National Institute of Standards and Technology, published in the **Federal Register** on Friday, October 2, 1987 (52 FR 37082–37096) is amended as follows:

1. *Staffing—Reports to OPM:* OPM's Office of Examining Services has decided it does not want a report on each direct-hire appointment. The following sentence (52 FR 37090) is deleted:

A completed copy of the Federal Automated Examining System (FAES), Key Entry Examination System (KEES), or other appropriate appointment package will be provided to OPM's Office of Examining Services for all individuals appointed.

2. *Staffing—Open-Continuous Applications:* The statement on open-continuous applications appeared under the subsection titled "Direct Examination and Hiring: Critical Shortage Occupations," and was intended to apply only to that category; therefore "critical shortage occupations" is added to the following sentence (52 FR 37090) as indicated by brackets:

Although no registers will be maintained, NBS will accept applications on an open-continuous basis for all direct hire [critical shortage occupations]

3. *Staffing—Critical Shortage Highly-Qualified Candidates:* The Support Career Path was not intended to be covered by this category; therefore, the sentence that reads "Critical shortage highly-qualified candidates may be directly hired for entry level positions in the Scientific and Engineering, Scientific and Engineering Technician, and Support Career Paths" (52 FR 37090) is changed to read:

Critical shortage highly-qualified candidates may be directly hired for entry level positions in the Scientific and Engineering and Scientific and Engineering Technician Career Paths

4. *Staffing—Recruitment and Retention Allowances:* The authorities for approving recruiting and retention allowances were unintentionally reversed in one passage (52 FR 37091). The passage is changed to read:

A Recruitment Allowance may be paid in a lump sum at or soon after entry on duty or may be paid in increments over a period of time determined by the [MOU Director], not to exceed 36 months. A Retention Allowance may not be paid in a lump sum but must be paid in increments over a period of time determined by the [PMB], not to exceed 36 months.

5. *Travel Expenses:* The "Travel Expenses" subsection (52 FR 37091) is replaced with the following new subsection (new material is bracketed) to make clear which sections of title 5, U.S. Code, are covered and to emphasize the repayment obligation upon separation prior to the end of the agreement:

*Travel Expenses*

At the discretion of the NIST Director, travel and transportation expenses, advancement of funds, [per diem expenses incident to travel, and/or relocation expenses] may be provided to new hires in the same manner as is authorized in sections 5723, 5724, (5724a, 5724b, and 5724c) of title 5, U.S. Code. The selecting official, with approval of the MOU Director or the MOU Director's designee, will make application decisions. Recipients must sign service agreements indicating commitment of at least 12 months continued service. Service agreements will contain [a repayment obligation] in the event the recipient separates from Federal service before the end of the agreement. Actions to collect repayment may be terminated under appropriate circumstances and in accordance with generally applicable standards for termination.

6. *Staffing—Promotion:* The sentence that reads "A promotion is a move from one level (pay band) to a higher level within a career path, or a move from a level in one career path to a level with a higher pay range in another career path" (52 FR 37091) is changed to read:

A promotion is a change of an employee to (1) a higher pay band in the same career path, or (2) a pay band in another career path in combination with an increase in the employee's salary. The time-in-pay-band requirement for promotion eligibility is one year.

7. *Supervisory and Managerial Pay Differentials:* The intent of Congress on the discontinuance of a supervisory differential was not adequately reflected in the notice; therefore, the following new subsection is added to the section on "Pay Administration" (52 FR 37092) immediately under the subsection titled "Supervisory and Managerial Pay Differentials":

**Supervisory and Managerial Pay Differentials**

The House Post Office and Civil Service Committee Report accompanying the project legislation stated that supervisory and managerial pay differentials "will be terminated when an employee leaves a supervisory or management position. Such termination will not be considered a reduction in pay." Where an employee's pay band does not change as a result of undertaking supervisory responsibilities, the granting of a differential will not be considered a promotion or a competitive action. The differential will be discontinued when an employee's supervisory responsibilities are discontinued. The cancellation of a differential will not itself constitute a demotion or a reduction in pay. The cancellation of a supervisory differential, therefore, will not constitute an adverse action and there will be no right of appeal under 5 USC Chapter 75.

[FR Doc. 89–11778 Filed 5–16–89; 8:45 am]

BILLING CODE 6325–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–26804; File No. SR–GSCC–89–3]**

## Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Government Securities Clearing Corporation ("GSCC") Relating to Its Fee Structure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 14, 1989 GSCC 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 GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify GSCC's fee schedule to establish a minimum monthly fee of $500.00 that each participant must remit to GSCC.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC 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. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) The purpose of the proposed rule change is to establish a minimum monthly fee, for each member of the Comparison System, for use of GSCC's trade comparison services. This minimum fee will ensure that GSCC receives sufficient revenues on a regular basis to be able to meet the fixed expenses associated with providing trade comparison services.

(b) The proposed rule change provides for a minimal minimum monthly fee that is based on GSCC's fixed expenses and is equitably allocated; it is, therefore, consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Act"), and the rules and regulations thereunder applicable to a self-regulatory organization.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

GSCC does not believe that the proposed rule will have an impact on, or impose a burden on, competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Comments on the proposed rule change have not been solicited or received. Members will be notified of the rule filing, and comments will be solicited, by an Important Notice. GSCC will notify the Securities and Exchange Commission of any written comments received by GSCC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

**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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to SR–GSCC–89–3 and should be submitted by June 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

May 9, 1989.

[FR Doc. 89–11800 Filed 5–16–89; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–26793; File No. SR–PSE–89–05]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the entering of Orders From off the Trading Floor

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 14, 1989, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") 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**

*Item 1. Text of the Proposed Rule Change*

The Pacific Stock Exchange Incorporated ("PSE" of the "Exchange"), proposes to more clearly delineate the procedure for entering orders from off the floor, amending the language of Advice B–11, of the Options Floor Procedure Advices. (Brackets indicate language to be deleted, italic indicates new language.)

B–11

Subject: Orders Entered From Off the Floor

Pursuant to Rule VI, Section [79] *73* of the Board of Governors, [and the Rules of the Securities Exchange Act of 1934] *only transactions that are initiated on the Floor of the Exchange shall count as Market Maker transactions. As such,* Market Makers and Floor Brokers effecting transactions as [a] Market Makers are [reminded] *instructed* that, except as specified below, only transactions that are initiated on the Floor of the Exchange by that person shall count as Market Maker transactions and be entitled to special margin treatment, pursuant to the [Net Capital Rule] *net capital requirements of Rule 15c3–1 of the Securities Exchange Act of 1934* and Regulation T *of the Board of Governors of the Federal Reserve System.*

Accordingly, any position established for the account of a Market Maker which [was] *has been* "entered from off the floor" [will] *must* be placed in the Market Maker's investment account and *be* subject to applicable customer margin.

Market Maker clearing firms are directed to instruct their respective trading desks to identify [such an order] *their order as entered from off the floor* by placing a "C" after the Market Maker's number in the firm box on the ticket. [This will identify the orders as "entered from off the floor."] Floor brokers, *when* accepting an order by phone [,] from a Market Maker, are similarly directed to identify that order in the above manner.

(Market Makers while on the Floor may enter GTC orders with a Floor Broker, however, these orders must be limit orders where the quantity cannot be increased or the limit changed. Any such change in a GTC order shall require that order to be handled as a new order, subject to the guidelines of an "order entered from off the floor.")

*An exception to the above stated procedure exists when an order is market GTC, as referred to in Rule I, Section 6(a) of the Rules of Board of Governors. A Market Maker, while on the floor, may enter a GTC order with a Floor Broker and still receive special margin treatment, as described above. However, the order must be a limit order where the quantity cannot be increased or the limit changed. If the order is increased or the limit changed, the GTC order shall be handled as a new order, subject to the guidelines of an "order entered from off the floor," and shall not receive the special margin*

*treatment. Likewise, (L)*imit orders to "buy and sell" in the same series, discretionary *orders,* and "market not-held" orders may not be handled on a GTC basis without being subject to the above provisions (regarding) *applicable to* "orders entered from off the floor."

**II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified Item IV below. The self-regualtory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed rule Change*

The purpose of the proposed rule change is to more clearly delineate the precise procedure with regard to orders entered from of the floor. The amendment does not alter the present requirements for special market-maker margin treatment; it merely serves as a clarification of the existing advice.

The amendment clarifies that "G" ("Good until cancelled") order are exempted from the requirement that an order must be initiated by the market maker or floor broker transacting as a market maker in order to be entitled to special margin treatment. Furthermore, the proposed rule change is designed to clarify that in order to the accorded the special margin treatment, the GTC order must satisfy certain specified conditions; if the conditions are not met, the GTC order is not entitled to any special treatment.

The proposed rule change is consistent with the provisions of section 6(b) of the Act in general and, in particular, furthers the objective of section 6(b)(5) in that it is designed to promote fair and equitable principles of trade and the protection of investors and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

**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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–88–20 and should be submitted by June 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 8, 1989.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89–11801 Filed 5–16–89; 8:45 am]

BILLING CODE 8010–01–M

**[Release No. 34–26794; File No. SR–NASD–88–52]**

## Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Penalty for NASDAQ Market Maker Withdrawals

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 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") on November 28, 1988, and amended on May 5, 1989, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD is proposing to amend Article III of the NASD Rules of Fair Practice to add new section 44. The proposed rule change would prohibit a firm that withdraws as a market maker in a National Association of Securities Dealers Automated Quotations (NASDAQ) System security from continuing market making activity in that security in the non-NASDAQ over-the-counter market during any period that the firm is ineligible to reenter NASDAQ as a market maker.

**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 NASD 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 NASD has prepareed summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

On June 9, 1988, the Commission approved amendments to the Rules of Practice and Procedures for the Small Order Execution System and to Schedule D to the NASD By-Laws. In pertinent part, an amendment was

approved to Part VI, Section 8 of Schedule D to impose a penalty of 20 business days for unexcused withdrawal from market making in any NASDAQ security. (*See* File No. SR–NASD–88–1, Securities Exchange Act Release No. 25791.) The NASD believes that the public policy purpose behind the adoption of the 20-day penalty would be undermined if firms could readily withdraw from making a market in the NASDAQ System and transfer their market making activity in the same security to the non-NASDAQ over-the-counter maket during the 20 business day penalty period.

Th NASD is, therefore, proposing to add new Section 44 to Article III of the NASD Rules of Fair Practice to prohibit a firm that withdraws as a market maker in a NASDAQ security from continuing market making activity in that security in the non-NASDAQ over-the-counter market during any period that the member is not eligible to reenter NASDAQ as a market maker. As a practical matter, the period would be 20 business days as a result of the operation of Part VI, section 8 of Schedule D to the NASD By-Laws, which imposes a 20 business day penalty for unexused withdrawal from market making in any NASDAQ security. It should be noted that the proposed rule change is not affected by the NASD's proposal to operate a Bulletin Board that would carry price and volume information on over-the-counter securities. (*See* File No. SR–NASD–88–19.) As stated in that rule filing, NASDAQ securities are not eligible for quotation in the Bulletin Board service. Thus, a NASDAQ market maker that has been suspended with respect to a particular NASDAQ security will not be able to make a market in that security in the Bulletin Board. The NASD believes it is important to the integrity of the NASDAQ System and to be consistent with the Commission's approval of the 20 business day penalty to adopt rules that ensure that a member cannot circumvent the 20 business day penalty by making a market in the same security in the non-NASDAQ over-the-counter market while it is ineligible to do so in the NASDAQ System.

Because the proposed rule change prevents market makers that are ineligible for NASDAQ market making from continuing to act as a market maker in the over-the-counter market, the NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) under the Act on the basis that the proposed change is designed to promote just and equitable principles of trade and to assist the NASD in enforcing its rules applicable to the NASDAQ System.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Since the proposed rule change would prohibit a member from making a market in a NASDAQ security during the 20 business days that the member is ineligible to reenter NASDAQ as a market maker, the proposed rule change would prevent the member from being a market maker in any non-NASDAQ over-the-counter medium that is competitive with the NASDAQ System. The NASD believes that the proposed rule change does not unfairly discriminate against any non-NASDAQ over-the-counter printed or automated quotation medium because the market maker is free, subsequent to the expiration of the 20 business day penalty, to act as a market maker in the non-NASDAQ over-the-counter media and not return as a market maker to the NASDAQ System. Further, while a member is a market maker in the NASDAQ System, it can also be a market maker in any other non-NASDAQ over-the-counter medium (except the NASD's proposed Bulletin Board, which will not carry NASDAQ securities). The NASD believes that the 20 business day penalty is important to ensuring the depth and liquidity of the NASDAQ market and that it is in the interest of public investors that members be discouraged from withdrawing as a NASDAQ market maker during any period of high trading volume in the System. The NASD does not believe, therefore, that the proposed rule change would inhibit the development of any other printed or automated non-NASDAQ quotation medium.

For the foregoing reasons, the NASD belives that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

In the **Federal Register** June 21, 1989 or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD 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 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD All submissions should refer to the file number in the caption above and should be submitted on or before June 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

**Jonathan G. Katz,**

*Secretary.*

Dated: May 8, 1989.

[FR Doc. 89–11802 Filed 5–16–89; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. IC–16950; 812–7058]**

## Cowen Income & Growth Fund, Inc.; Application.

May 11, 1989.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* Cowen Income & Growth Fund, Inc. ("Applicant").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rules 22c–1 and 22d–1 under the 1940 Act.

*Summary of Application:* Applicant seeks an order permitting modification

of its present method of assessing a contingent deferred sales charge on redemptions of its shares. Applicant proposes to institute a front-end sales charge and as a transitional arrangement proposes to assess a modified contingent deferred sales charge on certain redemptions made within one year of the requested order.

*Filing Date:* The application was filed on July 1, 1988, an amendment was filed on April 21, 1989.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 5, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, Financial Square, New York, New York 10005–3597.

**FOR FURTHER INFORMATION CONTACT:** Cecilia C. Kalish, Staff Attorney (202) 272–3035 or Stephanie M. Monaco, Branch Chief (202) 272–3030 (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 an open-end, diversified, management investment company that was incorporated under the laws of Maryland on May 12, 1986. On May 13, 1986, Applicant filed with the Commission (1) a Notification of Registration on Form N–8A pursuant to section 8(a) of the 1940 Act and (2) a Registration Statement on Form N–1A under the Act and the Securities Act of 1933, as amended. Applicant's shares are distributed by Cowen & Co. ("Cowen"). Through its investment management division, Cowen Asset Management, Cowen also serves as investment manager for Applicant.

2. Applicant has been authorized by the Commission (1) to offer its shares subject to a contingent deferred sales charge (the "Charge") and (2) to institute a plan of distribution in accordance with Rule 12b–1 under the 1940 Act (Investment Company Act Release Nos. 15227 (July 25, 1986) (notice) and 15260 (August 18, 1986) (order)).

3. Applicant proposes to eliminate the Charge with respect to all purchases of Applicant's shares made after the date the requested order is issued (the "Effective Date") and to institute a front-end sales charge pursuant to which such purchases will be subject to a maximum sales charge of 4.85 percent (5.10 percent of the amount invested). The proposed sales charge will vary with the amount of purchase and may be modified as prescribed by Applicant's Board of Directors and agreed to by Cowen, subject to Rule 22d–1 under the 1940 Act.

4. Applicant proposes to modify the Charge with respect to investments made before the Effective Date (the "Modified Charge"). For a period of one year following the Effective Date, the Modified Charge imposed on a redemption of Applicant's shares purchased prior to the Effective Date would be the lower of (a) 2.5 percent of the amount of the redemption calculated in the same manner and subject to the same waivers and other conditions that currently exist with respect to the Charge, or (b) the amount the shareholder would have paid under the Charge. After such one year period, no charge will be imposed on redemption of Applicant's shares purchased prior to the Effective Date.

5. Applicant notes that the filing of this Application and the arrangements imposed herein, including the operation of the Modified Charge, were disclosed in a supplement, dated July 1, 1988, to Applicant's prospectus. In addition, Applicant will consider making similar disclosures to its shareholders in periodic reports and possibly other shareholder communications.

**Applicant's Legal Conclusions**

1. Although there exists no precedent for this kind of relief, Applicant requests merely a modification of the Charge that has already been approved by the Commission. Applicant believes that all of the elements of its proposal are in the interests of its shareholders and are consistent with the policies and purposes underlying the 1940 Act. A front-end sales charge commonly is imposed by mutual funds and its use is subject to compliance with Rule 22d–1 under the 1940 Act, but is not otherwise subject to prior approval by the Commission. In addition, there exists ample precedent for imposing a contingent deferred sales charge in the first instance. Moreover, in those instances where the Charge would be more advantageous than the Modified Charge to a redeeming shareholder, only the Charge would be assessed.

2. Applicant believes that, like the Charge previously approved by the Commission, the Modified Charge is fair and in the best interests of Applicant's shareholders for the following reasons:

(a) *Operation of the Modified Charge.* Applicant submits that the operation of the Modified Charge will result in most shareholders paying less than they would have been required to pay under the Charge and no shareholder will ever be required to pay any more than he or she would have been required to pay under the Charge. In addition, after the one year period during which the Modified Charge is in effect, all shareholders may redeem shares at their current net asset value without imposition of any form of deferred sales charge or other payment. Applicant asserts further that the Modified Charge is fair to shareholders because it applies only to redemptions of amounts representing purchase payments for shares and does not apply either to increases in the value of a shareholder's account through capital appreciation or to increases representing reinvestment of dividends.

(b) *Waivers of and Credits against the Modified Charge.* Applicant contends that certain of the waivers from the Modified Charge are justified on basic considerations of fairness to shareholders.

3. Applicant submits that the proposed arrangement is superior for promoting the distribution of shares. Cowen has, and plans to institute, additional funds with front-end sales charges. Applicant's shares would be exchangeable for the shares of such additional funds to the extent permitted by section 11 of the 1940 Act, any rules adopted thereunder or any exemptive order issued by the Commission. Accordingly, Cowen seeks to institute the same distribution structure for all funds in the complex. Thus, the proposed arrangement would permit shareholders of Applicant to exchange their shares for shares of other funds distributed by Cowen should their investment goals change, providing shareholders with enhanced investment flexibility. If the proposed arrangement were not instituted, Applicant's shares could not be made exchangeable for shares of other Cowen funds. In addition, the Modified Charge as a transitional arrangement will leave all shareholders in as good, if not better, a position than would be the case if the

Charge were to remain in effect. As a result, Applicant submits that the proposed arrangement is consistent with the interests of Applicant's shareholders as well as the interests of members of the public that in the future may invest in Applicant.

4. Applicant submits that the operation of the Modified Charge as a transitional arrangement is also consistent with the purposes of the 1940 Act insofar as it is designed to place all shareholders—both those subject to the Modified Charge and those who, after the Effective Date, purchase shares subject to a front-end sales charge—on an equal footing with regard to the ability to exchange their shares. Thus, Applicant believes that this arrangement is consistent with the policy enunciated in section 1(b)(3) of the 1940 Act that the interests of investors are adversely affected with investment companies issue securities containing inequitable or discriminatory provisions. In addition, Applicant contends that the transitional arrangement is consistent with the purposes underlying the 1940 Act to the same extent as is Rule 22d–1 under the 1940 Act (compliance with which, as noted below, is a condition to the relief requested hereby) insofar as that Rule permits scheduled variations in or the elimination of a sales charge to particular classes of investors or transactions provided that the arrangement is administered uniformly and certain disclosure requirements are satisfied.

**Applicant's Conditions**

1. As conditions to the relief requested hereby:

(a) Applicant will comply with the provisions of Rule 12b–1 under the 1940 Act as they are now in effect and as they may be amended in the future;

(b) Applicant will comply with the provisions of Rule 22d–1 under the 1940 Act; and

(c) during the operation of the Modified Charge, Applicant will comply with the provisions of proposed Rule 6c–10, including the following:

(i) Applicant will not hold itself out or permit itself to be held out as a "no-load" fund, nor will Applicant be promoted in a manner that is likely to convey to investors the impression that no charges for sales or promotional expenses are imposed on Applicant's shares;

(ii) The amount of the contingent deferred sales charge payable upon redemption will be calculated as being the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the same or a lower percentage of the net asset value of the shares at the time of redemption;

(iii) The maximum amount of any contingent deferred sales charge, or combination of deferred sales charge and any sales charge payable at the time the shares are purchased, will not exceed the maximum sales charge that could have been imposed at the time the shares were purchased under Article III, section 26(d) of the Rules of Fair Practice promulgated by the National Association of Securities Dealers;

(iv) No amount will be charged to shareholders or to Applicant that is intended as payment of interest or any similar charge related to a contingent deferred sales charge;

(v) No contingent deferred sales charge will be imposed on an amount that represents an increase in the value of Applicant's shares due to capital appreciation;

(vi) No contingent deferred sales charge will be imposed on shares, or amounts representing shares, purchased through the reinvestment of dividend or capital gains distributions;

(vii) If all or part of a contingent deferred sales charge is payable at the time shares are redeemed, then shares, or amounts representing shares, that are not subject to any deferred sales charge will be redeemed first, and other shares or amounts will then be redeemed in order purchased, provided, however, another order of redemption may be used if such order would result in the redeeming shareholder paying a lower contingent deferred sales charge; and

(viii) The same contingent deferred sales charge will be imposed on all shareholders except that any scheduled variation in or elimination of a contingent deferred sales charge which is offered to a particular class of shareholders or in connection with a particular class of transactions will satisfy the conditions contained in paragraphs (a) through (d) of Rule 22d–1 under the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89–11798 Filed 5–16–89; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 35–24888]**

## Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 11, 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 May 11, 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 Connecticut Light and Power Company (70–7466)**

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, an electric and gas subsidiary of Northeast Utilities ("NU"), a registered holding company, has filed a post-effective amendment to its application pursuant to Sections 6(b) of the Act and Rules 50 and 50(a)(5) thereunder.

By order dated April 11, 1988 (HCAR No. 24622), CL&P was authorized to issue and sell, pursuant to the competitive bidding procedures of Rule 50 of the Act, as modified by the Commission's Statement of Policy, dated September 2, 1982 (HCAR No. 22623), up to $350 million principal amount of its first and refunding mortgage bonds ("Bonds"), in one or more series, from time to time through December 31, 1989. The net proceeds of the sale of the Bonds were to be used: (1) To refund approximately $170 million of CL&P's outstanding first and refunding mortgage bonds bearing relatively high interest rates through redemption and open market purchases; (2) to finance CL&P's construction program; (3) for general working capital purposes; and (4) to repay short-term borrowings incurred in performing the above transactions. The

April 1988 Order further provided that the aggregate amount of short-term borrowings that may be repaid from the proceeds of the issuance and sale of the Bonds was not to exceed $200 million.

On April 20, 1988 and November 9, 1988, CL&P sold $125 million principal amount of 8½% Bonds, Series PP, and $75 million principal amount of 9¾% Bonds, Series QQ, respectively. The proceeds of the sale of the $200 million of Bonds was used to pay off short-term debt. In accordance with the terms of the April 1988 Order, CL&P is unable to pay off additional outstanding short-term debt from the net proceeds of the sale of the remaining $150 million of the $350 million principal amount of Bonds authorized to be issued and sold. CL&P now requests authorization, through December 31, 1989, to use the proceeds from the sale of the remaining $150 million principal amount of Bonds to pay off its outstanding short-term debt.

**American Electric Power Company, Inc. (70–7622) AEP Resources, Inc.**

American Electric Power Company, Inc. ("AEP"), a registered holding company, and a proposed wholly owned nonutility subsidiary company, AEP Resources, Inc. ("AEP Resources"), both located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45, 50(a)(5), 87, 90 and 91 thereunder.

AEP proposes to organize and acquire the capital stock of a new wholly owned subsidiary, AEP Resources. The primary business of AEP Resources will be the investment and participation in qualifying cogeneration facilities and in qualifying small power production facilities as defined by the Public Utility Regulatory Policies Act of 1978 and the rules and regulations promulgated thereunder by the Federal Energy Regulatory Commission. The qualifying cogeneration facilities may be located in any geographic area, but participation by AEP Resources in qualifying small power production facilities will be limited to the service territories of the AEP System. The initial financing the AEP Resources will be provided by the acquisition by AEP of 100 shares of AEP Resources common stock, par value $1 per share, for $10,000.

AEP requests authorization to invest up to an aggregate amount of $7.5 million in AEP Resources for each of the four years in the period ending December 31, 1992 for the purpose of financing AEP Resources' preliminary development and administrative costs. Such investment will take the form of acquisitions of common stock of AEP Resources and/or capital contributions. In addition, subject to the above limitation of $7.5 million per year, AEP Resources may obtain debt financing from unaffiliated third parties ("Debt Financing"). Such Debt Financing may require a guarantee by AEP. Non-affiliate Debt Financing obtained by AEP Resources or guaranteed by AEP will not exceed a term of 10 years or bear an interest rate in excess of 115% of the prime rate in effect at the time of issuance. AEP Resources requests an exception from the competitive bidding requirements of Rule 50 pursuant to subsection 50(a)(5) in connection with the Debt Financing.

**New England Electric System (70–7652)**

New England Electric System ("NEES"), a registered holding company, 25 Research Drive, Westborough, Massachusetts 01582 and Massachusetts Electric Company ("Mass. Electric"), 25 Research Drive, Westborough, Massachusetts 01582, The Narragansett Electric Company ("Narragansett"), 280 Melrose Street, Providence, Rhode Island 02901, and Granite State Electric Company ("Granite State"), 33 West Lebanon Road, Lebanon, New Hampshire 03766 (collectively referred to as the "Retails"), wholly owned subsidiaries of NEES, have filed a declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

NEES proposes to make, from time to time through June 30, 1991, one or more capital contributions to the Retails, not to exceed an aggregate of $20 million for Mass. Electric, $2 million for Granite State, and $20 million for Narragansett. The proposed capital contributions will permit the Retails to raise external funds and maintain proper balances of debt and equity.

The Retails will apply the funds received form the capital contributions for general corporate purposes including, but not limited to, the reimbursement of the treasury for, or the payment of short term borrowings incurred for, capital additions and improvements to plant and property and working capital.

**Consolidated Natural Gas Company, et al. (70–7657)**

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its subsidiaries, CNG Energy Company, CNG Research Company, CNG Trading Company, Consolidated Natural Gas Service Company, Inc., The Peoples Natural Gas Company, all of the foregoing located at CNG Tower, Pittsburgh Pennsylvania 15222–3199; CNG Development Company, CNG Coal Company, One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244; CNG Producing Company and its subsidiary CNG Pipeline Company, One Canal Place, Suite 3100, New Orleans, Louisiana 70130; CNG Transmission Corporation, 445 West Main Street, Clarksburg, West Virginia 26301; Hope Gas, Inc., P.O. Box 2868, Clarksburg, West Virginia 26301; The East Ohio Gas Company, 1717 East Ninth Street, Cleveland, Ohio 44115; The River Gas Company, 324 Fourth Street, Marrietta, Ohio 45750; and West Ohio Gas Company, 319 West Market Street, Lima, Ohio 45802 ("Subsidiaries"), have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

Consolidated proposes, for intra-system financings through June 30, 1990, to issue and sell up to $500 million of either domestic commercial paper and/or Euro-commercial paper to dealers pursuant to an exception from competitive bidding. Consolidated further proposes to borrow, repay and reborrow under $500 million back-up bank lines of credit through June 30, 1990 without collateral, to the extent that it becomes impracticable to sell the aforesaid commercial paper due to market conditions or otherwise. Such back-up lines of credit for 100% of the outstanding commercial paper are required by credit rating agencies.

It is also proposed that through June 30, 1990: (1) Consolidated make up to $875 million in open account advances to certain Subsidiaries; (2) Consolidated acquire and certain Subsidiaries issue up to $215 million in long-term non-negotiable notes; (3) Consolidated acquire from, and CNG Coal Company, CNG Development Company, CNG Producing Company, CNG Research Company, CNG Transmission Corporation and The Peoples Natural Gas Company issue an aggregate of $195 million in common stock at $100 par value; (4) CNG Coal Company, CNG Producing Company, The Peoples Natural Gas Company and CNG Development Company amend their certificates of incorporation to increase its authorized capital stock from 400,000 to 450,000 4,500,000 to 5,000,000 715,000 to 1,300,000, and 1,100,000 to 1,400,000 shares of common stock, respectively, at $100 par value; and (5) CNG Producing Company provide up to an aggregate of $1.5 million short-term and/or long-term financing to CNG Pipeline Company through short-term loans in the form of open account balances and/or long-term loans evidenced by non-negotiable notes and/or the purchase of up to

15,000 shares of common stock, $100 par value.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 89-11799 Filed 5-16-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16948; File No. 812-7207]

## Crown America Life Insurance Co. et al.

May 10, 1989.

**AGENCY:** The Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicants:* Crown America Life Insurance Company ("Crown America"), American Crown Life Insurance Company ("American Crown"), (Crown America and American Crown, collectively, the "Company"), Crown America Separate Account B of Crown America ("Company B"), American Crown Separate Account B of American Crown ("Account BA"), (Account B and Account BA, Collectively, the "Accounts," and, individually, an "Account"), C.A.L. Investment Services, Inc. ("C.A.L."), and Dreyfus Service Corporation ("DSC").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

*Summary of Application:* Applicants seek an order to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Accounts under a deferred variable annuity contract (the "Deferred Annuity") and an immediate variable annuity certain contract (the "Annuity Certain") (collectively, the "Contracts") and to permit payment to the Company of a guaranteed death benefit charge from the accumulation value in the Accounts under the Deferred Annuity.

*Filing Date:* The Application was filed on December 28, 1988 and amended on March 31, 1989.

*Hearing or Notification of Hearing:* If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on June 5, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personnally or by mail, and also send it to the Secretary of the SEC, along with proof of serrvice by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of hearing by writing to the Secretary of the SEC.

**ADDRESS:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Crown America Life Insurance Company, P.O. Box 4020, Buffalo, New York 14240-4020.

**FOR FURTHER INFORMATION CONTACT:** Cindy J. Rose, Financial Analyst, at (202) 272-2058 or Clifford E. Kirsch, Special Counsel, at (202) 272-2061.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

### Applicants Representations

1. Crown America is a stock life insurance company organized under the laws of the State of Kentucky. Crown America was initially authorized to conduct business as a life insurance company in 1945. Crown America is authorized to do business in all jurisdictions except New York. Crown America offers life insurance and annuities.

American Crown is a stock life insurance company organized under the laws of the state of New York. American Crown was initially authorized to conduct business as a life insurance company in 1982. American Crown is authorized to do business only in New York. American Crown offers life insurance and annuities. American Crown is an affiliate of Crown America. The Contracts to be offered by American Crown are identical in all relevant respects to the Contracts to be offered by Crown America.

2. Account B is a distinct separate investment account of Crown America, and Account BA is a distinct separate investment account of American Crown. The Accounts act as funding vehicles for the Contracts. The assets of each Account will be kept separate from the general account assets and any other separate accounts of the Company sponsoring the Account. The Accounts are unit investment trusts and have filed registration statements on Form N-4 under the 1940 Act and the Securities Act of 1933 to register the Contracts. Accounts B and BA are divided into divisions, each division investing in shares of a designated series of the Dreyfus Variable Life Investment Fund (the "Fund"). The Fund is registered with the Commission as an open-end managment investment company and has filed a registration statement on Form N-1A. The Fund is a series-type mutual fund that contains several series, each of which will pursue different investment objectives and policies.

3. Pursuant to Distribution Agreements between C.A.L. and the Company and between DSC and the Company, C.A.L. and DSC will each act as a Principal Underwriter and Distributor of the Company's Contracts. C.A.L. and DSC will enter into sales agreements with other broker/dealers to solicit for the sale of the Contracts through registered respresentatives who are licensed to sell securities and variable insurance products including variable annuities. The registered representatives will be appointed by the Company to sell the Company's Contracts. The offering of the Contracts will be continuous.

4. The Contracts provide for the accumulation of values on a variable basis except to the extent that a portion of the accumulation value is allocated to the Guaranteed Interest Division, which is part of the Company's general account. Payment of annuity benefits will be on a fixed or variable basis.

5. The Deferred Annuity is an individual flexible premium payment contract which provides for an initial premium payment and for additional premium payments if the Contract owner so desires. There is, however, no obligation to make additional payments. In the Deferred Annuity, the Company guarantees a minimum death benefit payable to the beneficiary if the Contract owner or the Annuitant (when there is no Contingent Annuitant) dies prior to the annuity commencement date. The Company will pay the greater of (a) the accumulation value and (b) the lesser of the guaranteed death benefit and the maximum guaranteed death benefit. The guaranteed death benefit is the accumulated value of the premiums paid adjusted at an annual interest rate of 5% minus the accumulated value of the partial withdrawals taken adjusted at an annual interest rate of 5%. The maximum guaranteed death benefit is two times the sum of premiums paid minus two times the sum of partial withdrawals taken. The charge for the guaranteed death benefit will be no greater than $1.20 per $1,000 of guaranteed death benefit per contract year. This charge is not an asset-based charge. Rather it is a contract charge imposed to compensate the Company for the risk that the minimum guaranteed death benefit due under a Deferred Annuity when the annuitant

dies during the accumulation phase may exceed the accumulation value. Expressed as an asset charge (assuming a hypothetical gross return of 4%), it would effectively increase the mortality and expense risk charge by approximately 0.10%.

6. The Annuity Certain is an immediate annuity which provides for payments of a single premium and allows for variable annuity payments to be paid to the Annuitant over a fixed period of time. At any time while a Contract is in effect, part of or all of the values under a Contract may be surrendered for cash payment, or alternatively, the values under the Contracts may be applied to annuity options available at the time of surrender.

7. Deferred sales loading at a maximum rate of 7.5% of each premium payment is deducted from each premium payment for distribution expenses. If the initial or single premium for a Contract or Contracts simultaneously issued to a Contract owner exceeds certain specified limits, the Company will reduce the rate of the deferred sales loading for all premiums paid under such contract(s) in accordance with the following schedule:

| Initial and/or single premium payments | Deferred sales loading (in percent) |
|---|---|
| Up to $50,000 | 7.5 |
| $50,001 to $100,000 | 6.5 |
| $100,001 to $250,000 | 5.5 |
| $250,001 to $1,000,000 | 4.0 |
| $1,000,001 plus | 3.0 |

All deferred sales loading applicable to initial, single, or additional premium payments is deducted by the Company at the time of payment but is advanced to the divisions as a part of a Contract's accumulation value in order for the Contract owner to benefit from the investment experience on the loading until the Company recovers the loading from the accumulation value by redeeming the loading in equal installments on the first and subsequent contract processing dates following the receipt and acceptance of the payment over a period specified in the Contract. (This period is the lesser of ten years and, in the case of a Deferred Annuity, the period ending on the annuity commencement date, or, in the case of an Annuity Certain, the Certain Period). If the Contract owner surrenders a Contract, any remaining deferred loading will be recovered by the Company before proceeds are paid to the owner. The Company believes that the deferred sales loading under the Contracts is a front-end load for purposes of the provisions of the 1940 Act applicable to sales loads because under the Contracts and for financial reporting purposes the difference is treated as being deducted from premiums when paid. Therefore, Applicants do not believe that they will need the exemptive relief provided by Rule 6c–8 under the 1940 Act.

8. The Contracts provide that a maximum mortality and expense risk charge equal to 0.002477% of the asset values in each division of the Accounts will be deducted on a daily basis (equivalent to an annual charge of 0.90%). In the Deferred Annuity, approximately 0.55% of the maximum charge may be allocated to the mortality risk and 0.35% may be allocated to the expense risk. In the Annuity Certain, approximately 0.45% of the maximum charge may be allocated to the mortality risk and 0.45% may be allocated to the expense risk. The mortality risk assumed by the Company arises from its obligations to continue to make annuity payments under the income plan provisions of the Contracts, determined in accordance with the guaranteed annuity tables and other provisions of the applicable Contract, regardless of how long each annuitant lives and regardless of how long all annuitants as a group live. The particular mortality risk assumed by the Company under the Deferred Annuity is the risk that, after annuitization or upon selection of an annuity option with a life contingency, annuitants will live longer than the Company's actuarial projections indicate, resulting in higher than expected payments during the payout phase, since the payment options are guaranteed not to be less than the tables discussed in the Deferred Annuity. The particular mortality risk assumed by the Company under the Annuity Certain relates to the fact that, at all times, the Company will offer the option to convert the Annuity Certain, which does not provide for payments based on life contingencies, to one or more income plans that provide for payments based on life contingencies. The mortality risk assumed by the Company is the risk that annuitants, or beneficiaries after the death of the annuitant, will choose one such option and will possibly live longer than the Company's actuarial projections indicate, resulting in higher than expected payments during the payout phase, since any payment option is guaranteed not to be less than the tables discussed in the Annuity Certain. In addition, the Company assumes a risk that the charges for the administrative expenses may not be adequate to cover such expenses.

9. Applicants represent that they have reviewed publicly available information regarding the level of the mortality and expense risk and guaranteed death benefit charges under comparable variable annuity contracts currently being offered in the industry, taking into consideration such factors as current charge level or annuity rate guarantees and the markets in which the Contracts will be offered. Based upon the foregoing, Applicants represent that the maximum charges under the Contracts are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

10. Applicants do not believe that the deferred sales loading imposed under the Contracts will necessarily cover the expected costs of distributing the Contracts. Any "shortfall" will be made up from the general account assets which includes amounts derived from risk charges. The Company has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit the Accounts and the Contract owners. The Company will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

11. Applicants further represent that Accounts B and BA will only invest in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of such funds, formulate and approve any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89–11764 Filed 5–16–89; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

### The U.S. Organization for the International Telegraph & Telephone Consultative Committee (CCITT) Study Group D; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on June

20, 1989 at 2:00 p.m. at MITRE Corp., Wilson Building—7600 Old Springhouse Road, McLean, Va.

The purpose of the meeting is to review contributions for the July 3–13 meeting of Study Group VII, Geneva, Switzerland, and consider any other business relevant to Study Group D terms of reference.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Paul Tsuchiya, at Mitre Corporation, telephone (703) 883–7532. A guard will escort attendees to the proper meeting room.

Date: May 2, 1989.

**Earl S. Barbely,**

*Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.*

[FR Doc. 89–11795 Filed 5–16–89; 8:45 am]

BILLING CODE 4710–07–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: May 11, 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:* 1545–0609.
*Form Number:* 1285C, 1285(DO/SC) (C).
*Type of Review:* Extension.
*Title:* Problem Resolution Program; Follow-up Letter
*Description:* After a taxpayer problem is resolved, follow-up comments are needed to evaluate individual case processing, monitor taxpayer satisfaction, and to provide a form for the taxpayer to comment or suggest improvements on the program. Letters 1285C and 1285(DO/SC) (C) are used for these purposes.
*Respondents:* Individuals or households, Farms, Businesses or other for-profit.
*Estimated Number of Respondents:* 15,000.
*Estimated Burden Hours Per Response:* 20 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 3,000 hours.
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 89–11796 Filed 5–16–89; 8:45 am]

BILLING CODE 4810–25–M

### Public Information Collection Requirements Submitted to OMB for Review.

Date: May 11, 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.

**Alcohol, Tobacco and Firearms**

*OMB Number:* 1512–0485.
*Form Number:* ATF REC 5120/2 and ATF F 5125.25 (698).
*Type of Review:* Extension.
*Title:* Application to Establish and Operate Wine Premises (ATF REC 5120/2).
Letterhead Applications, and Notices Related to Wine (ATF F 5125.25 (698)).
*Description:* Applications, letterhead applications and notices relating to wine are required to ensure that the intended activity will not jeopardize the revenue, due the Federal Government.
*Respondents:* Farms, Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 1
*Estimated Burden Hours Per Response:* 1 hour
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 1 hour.
*Clearance Officer:* Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
*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. 89–11797 Filed 5–16–89; 8:45 am]

BILLING CODE 4810–25–M

## UNITED STATES INFORMATION AGENCY

### A Grants Program for Private Not-for-Profit Organizations; in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between athe peoples of the United States and Taiwan and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175, entitled "Grants Programs for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities," announced in the **Federal Register** February 9, 1989.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate.

**Taiwan Agricultural Trade Journalists**

The Office of Private Sector Programs proposes a 21-day program for ten agricultural trade journalists from Taiwan designed to give them a greater understanding of the American perspective on issues of international agricultural trade. The program should begin in September 1989. A U.S. not-for-profit institution will design the program and select the American participants. The American Institute in Taiwan will choose the journalists from Taiwan. A U.S. not-for-profit institution with expertise in the fields of jouralism and

American agricultural policies will conceive and execute the program. American participants should include journalists and government and private sector officials in agriculture. The program design should include a session in Washington, DC, as well as visits to one or two important agricultural centers of the country.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming, and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to develop and conduct the above project successfully and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than twenty-one days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to these specific programs by name in your letter of interest: Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Initiative Grants, Taiwan Agricultural Journalists), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: April 21, 1989.

**Robert Francis Smith,**

*Director, Office of Private Sector Program.*

[FR Doc. 89-11742 Filed 5-16-89; 8:45 am]

BILLING CODE 8230-01-M

# Corrections

Federal Register
Vol. 54, No. 94
Wednesday, May 17, 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 COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 611 and 675

[Docket No. 90407-9107]

### Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands

*Correction*

In proposed rule document 89-10535 beginning on page 19199 in the issue of Thursday, May 4, 1989, make the following correction:

On page 19199, in the second column, under **DATE:**, in the second line, "June 19, 1989" should read "June 12, 1989".

BILLING CODE 1505-01-D

## DEPARTMENT OF DEFENSE

### Department of the Army

### 32 CFR Part 536

### Claims Against the United States

*Correction*

In rule document 88-27867 beginning on page 49298 in the issue of Wednesday, December 7, 1988, make the following correction:

On page 49302, in § 536.5, beginning with paragraph (d) in the first column and up to paragraph (g) in the third column, text was printed out of order. The text is correctly published below.

§ 536.5 [Corrected]

* * * * *

(d) *Action by claimant*—(1) *Form of claim.* The claimant will submit his claim using authorized official forms whenever practicable. A claim is filed only when the elements indicated in § 536.3(c) have been supplied in writing by a person authorized to present a claim, unless the claim is cognizable under a regulation that specifies otherwise. A claim may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a).

(2) *Signatures.* (i) The claim and all other papers will be signed in ink by the claimant or by his duly authorized agent. Such signature will include the first name, middle initial, and surname. A married woman must sign her claim in her given name, for example, "Mary A. Doe," rather than "Mrs. John Doe."

(ii) Where the claimant is represented, the supporting evidence required by subparagraph (a)(5) of this section will be required only if the claim is signed by the agent or legal representative. However, in all cases in which a claimant is represented, the name and address of the representative will be included in the file together with copies of all correspondence and records of conversations and other contacts maintained and included in the file. Frequently, these records are determinative as to whether the statute of limitations has been tolled.

(3) *Presentation.* The claim should be presented to the commanding officer of the unit involved, or to the legal office of the nearest Army post, camp, or station, or other military establishment convenient to the claimant. In a foreign country where no appropriate commander is stationed, the claim should be submitted to any attache of the U.S. Armed Forces. Claims cognizable under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty, Article XVIII of the Treaty of Mutual Cooperation and Security between the United States and Japan regarding facilities and areas and the Status of United States Armed Forces in Japan (Japan SOFA) or other similar treaty or agreement are filed with designated claims officials of the receiving State.

(e) *Evidence to be submitted by claimant.* The claimant should submit the evidence necessary to substantiate his claim. It is essential that independent evidence be submitted which will substantiate the correctness of the amount claimed.

(f) *Statute of limitations*—(1) *General.* Each statute available to the Department of the Army for the administrative settlement of claims, except the Maritime Claims Settlement Act (10 U.S.C. 4802), specifies the time during which the right to file a claim must be exercised. These statutes of limitations, which are jurisdictional in nature, are not subject to waiver unless the statute expressly provides for waiver. Specific information concerning the period for filing under each statute is contained in the appropriate implementing sections of this regulation.

(2) *When a claim accrues.* A claim accrues on the date on which the alleged wrongful act or omission results in an actionable injury or damage to the claimant or his decedent. Exceptions to this general rule may exist where the claimant does not know the cause of injury or death; that is, the claim accrues when the injured party, or someone acting on his or her behalf, knows both the existence and the cause of his or her injury. However, this exception does not apply when, at a later time, he or she discovers that the acts inflicting the injury may constitute medical malpractice. (See *United States v. Kubrick,* 444 U.S. 111, 100 S. Ct. 352 (1979).) The discovery rule is not limited to medical malpractice claims; it has been applied to diverse situations involving violent death, chemical and atomic testing, and erosion and hazardous work environment. In claims for indemnity or contribution against the United States, the accrual date is the time of the payment for which indemnity is sought or on which contribution is based.

(3) *Effect of infancy, incompetency or the filing of suit.* The statute of limitations for administrative claims is not tolled by infancy or incompetency. Likewise, the statute of limitations is not tolled for purposes of filing an administrative claim by the filing of a suit based upon the same incident in a Federal, State, or local court against the United States or other parties.

(4) *Amendment of claims.* A claim may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). A claim may be amended by changing the amount, the bases of liability, or elements of damages concerning the same incident. Parties may be added only if the additional party could have filed a joint claim initially. If the additional party had a separate cause of action, his claim may not be treated as an amendment but only as a separate claim and is thus

barred if the statute of limitations has run. For example, if a claim is timely filed on behalf of a minor for personal injuries, a subsequent claim by a parent for loss of services is considered a separate claim and is barred if it is not filed prior to the running of the statute of limitations. Another example is where a separate claim is filed for loss of services or consortium by a spouse arising out of injuries to the husband or wife of the claimant. On the other hand, if a claim is timely filed by an insured for the deductible portion of the property damage, a subsequent claim by the insurer based on payment of property damage to its insured may be filed as an amendment even though the statute of limitations has run, unless final action has been taken on the insured's claim.

(5) *Date of receipt stops the running of the statute.* In computing this time to determine whether the period of limitations has expired, exclude the first day and include the last day, except when it falls on a nonworkday such as Saturday, Sunday, or a legal holiday, in which case it is to be extended to the next workday.

* * * * *

BILLING CODE 1505-01-D

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP89-95-001]

### Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

*Correction*

In notice document 89-11012 appearing on page 19948 in the issue of Tuesday, May 9, 1989, in the second column, in the heading, the "Docket No." was inaccurate and should read as set forth above.

BILLING CODE 1505-01-D

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. TM89-3-29-000]

### Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

*Correction*

In notice document 89-11062 appearing on page 19949 in the issue of Tuesday, May 9, 1989, in the first column, in the heading, the "Docket No." was inaccurate and should read as set forth above.

BILLING CODE 1505-01-D

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[AD-FRL-3468-4]

### Standards of Performance for New Stationary Sources; Amendments to Test Methods and Procedures

*Correction*

In rule document 89-3064 beginning on page 6660 in the issue of Tuesday, February 14, 1989, make the following corrections:

**§ 60.8 [Corrected]**

1. On page 6662, in the second column, in amendatory instruction 3, in the second line, "'on'" should read "'or'".

**§ 60.46 [Corrected]**

2. On the same page, in the 3rd column, in § 60.46(b)(1), in the 10th line, "$\%0_2$" should read "$\%O_2$".

**§ 60.43a [Corrected]**

3. On page 6663, in the third column, in amendatory instruction 8, the equation should read as follows:
$E_s = (340x + 520\ y)/100$ and
$\%P_s = 10$

4. On the same page, in the same column, in amendatory instruction 9, the equations should read as follows:
$E_s = (340x + 520\ y)/100$ and
$\%P_s = (10x + 30\ y)/100$

**§ 60.234 [Corrected]**

5. On page 6671, in the first column, in § 60.234(b)(3)(ii), in the fifth line, "$(R_{p2})$" should read "$(R_p)$".

**§ 60.266 [Corrected]**

6. On the same page, in the third column, in § 60.266(c)(1), the equation should read as follows:

$$E = [\sum_{i=1}^{N} (c_{si} Q_{sdi})]/(P\ K)$$

**§ 60.275 [Corrected]**

17. On page 6672, in the second column, in § 60.275, at the beginning of the second paragraph, the paragraph designation "(d)" should read "(b)".

8. On the same page, in the third column, in § 60.275(e)(2), the equation should read as follows:

$$c_{st} = [\sum_{i=1}^{n} (c_{si} Q_{sdi})]/\sum_{i=1}^{n} Q_{sdi}$$

**§ 60.275a [Corrected]**

9. On page 6673, in the second column, in § 60.275a(e)(2), the equation should read as follows:

$$c_{st} = [\sum_{i=1}^{n} (c_{si} Q_{sdi})] / \sum_{i=1}^{n} Q_{sdi}$$

**§ 60.285 [Corrected]**

10. On the same page, in the third column, in § 60.285(c)(1), in the eighth line, "$C_s$" should read "$c_s$".

11. On the same page, in the same column, in § 60.285(c)(2), in the third line, "$(C_s)$" should read "$(c_s)$".

12. On page 6674, in the 1st column, in § 60.285(d)(3), in the 11th line, "$(Nac_20)$" should read "$(Na_2O)$"; and after the 13th line, the equation and its conditions should read as follows:
$GLS = 100\ C_{Na_2S}/(C_{Na_2S} + C_{NaOH} + C_{Na_2CO_3})$
Where:
GLS = green liquor sulfidity, percent.
$C_{Na_2S}$ = concentration of $Na_2S$, as $Na_2O$, mg/liter (gr/gal).
$C_{NaOH}$ = concentration of NaOH as $Na_2O$, mg/liter (gr/gal).
$C_{Na_2CO_3}$ = concentration of $Na_2CO_3$ as $Na_2O$, mg/liter (gr/gal).

**§ 60.296 [Corrected]**

13. On the same page, in the second column, in § 60.296(b)(1), the equation should read as follows:
$Y = (H_1\ L)/(H_1\ L + H_g\ G)$

14. On the same page, in the same column, in § 60.296(d)(1), the equation should read as follows:
$E = (C_s Q_{sd} - A)/P$

**§ 60.404 [Corrected]**

15. On page 6676, in the third column, in § 60.404(b)(1), in the sixth and seventh lines "kb/Mg" should read "kg/Mg".

**§ 60.503 [Corrected]**

16. On page 6679, in the first column, in § 60.503(c)(3), the equation should read as follows:

$$E = K \sum_{i=1}^{n} (V_{esi}\ C_{ei})/(L\ 10^6)$$

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 89M-0112]

### Unilens Corp. Premarket Approval of Unilens™ 53 (Ocufilcon B) Soft (Hydrophilic) Aspheric Contact Lens

*Correction*

In notice document 89-10762 beginning on page 19440 in the issue of Friday, May 5, 1989, make the following correction:

On page 19440, in the 3rd column, under **Opportunity for Administrative Review**, in the 22nd through the 24th lines, remove "data and information showing that there is a genuine and substantial".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-940-09-4212-13; CACA 22587]

### California Realty Action; Exchange of Public and Private Lands in Riverside County and Order Providing for Opening of Public Land

*Correction*

In notice document 89-10117 beginning on page 18162 in the issue of Thursday, April 27, 1989, make the following corrections:

1. On page 18162, in the third column, the second line should read "Sec. 30, lot 11, S½NE¼NE¼SW¼,".

2. On the same page, in the same column, the 10th line should read "Sec. 21, S½NE¼, SW¼NW¼,".

3. On the same page, in the same column, under **San Bernadino Meridian, California**, the first line should read "T.4 S., R. 6 E.,".

4. On the same page, in the same column, under **San Bernadino Meridian, California**, the 16th line should read "Sec. 9, SE¼, W½NW¼NW¼, SE¼".

5. On the same page, in the same column, under **San Bernadino Meridian, California**, the 22nd line should read "NW¼NE¼, SE¼NW¼NE¼,".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

[Airspace Docket No. 89-AWP-3]

### Proposed Establishment of Transition Area, Lovelock, NV

*Correction*

In proposed rule document 89-6280 appearing on page 11232 in the issue of Friday, March 17, 1989, make the following correction:

**§ 71.181 [Corrected]**

On page 11232, in the third column, in § 71.181, under **Lovelock, NV [New]**, in the third line, "40°40'05"N." should read "40°04'05"N.".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 192

[T.D. 89-46]
RIN 1515-AA65

### Customs Regulations Amendments Relating to Exportation of Used Self-Propelled Vehicles

*Correction*

In rule document 89-9217 beginning on page 15402 in the issue of Tuesday, April 18, 1989, make the following correction:

**PART 192-[CORRECTED]**

1. On page 15403, in the third column, in the table of sections for Part 192, in the entry for § 192.2, "exportations" should read "exportation".

**§ 192.2 [Corrected]**

2. On page 15404, in the second column, in § 192.2(b), in the sixth line, remove the comma after "presented" and insert a period.

BILLING CODE 1505-01-D

federal register

Wednesday
May 17, 1989

Part II

# United States Sentencing Commission

## Sentencing Guidelines for United States Courts; Notice of Submission of Amendments to Congress

## UNITED STATES SENTENCING COMMISSION

### Amendments to the Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of submission of amendments to the sentencing guidelines to the Congress.

**SUMMARY:** Pursuant to its authority under section 994(p) of Title 28, United States Code, the Commission on May 1, 1989, submitted to the Congress for review a report containing a number of amendments to the sentencing guidelines, policy statements, and official commentary, together with the reasons for the amendments. The Commission's report also incorporated by reference certain temporary amendments previously adopted by the Commission pursuant to Section 21 of the Sentencing Act of 1987. These temporary amendments, which took effect June 15, 1988, are set out in the **Federal Register** of April 29, 1988 [53 FR 15532]. Notice of the amendments submitted to the Congress on May 1, 1989, was published in the **Federal Register** of March 3, 1989 [54 FR 9121], and a public hearing on the proposed amendments was held in Washington, D.C. on April 7, 1989. After review of the hearing testimony and additional public comment, the Commission promulgated the following amendments at meetings on April 18, 19, 25, and 28, 1989, each amendment having been approved by at least four voting Commissioners. During the requisite 180-day period of Congressional review, or at any time, the Commission welcomes comment on the amendments or any other aspect of the sentencing guidelines, policy statements, and official commentary.

**DATES:** Pursuant to 28 U.S.C. 994(p), as amended by section 7109 of the Anti-Drug Abuse Act of 1988 [Pub. L. 100–690, Nov. 18, 1988], the Commission has specified an effective date of November 1, 1989, for these amendments.

**ADDRESS:** Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, Attention: Guidelines Comment.

**FOR FURTHER INFORMATION CONTACT:** Paul K. Martin, Communications Director for the Commission, telephone (202) 662–8800.

**Authority:** 28 U.S.C. 994(a), (p); Section 7109 of the Anti-Drug Abuse Act of 1988.

**William W. Wilkins, Jr.,**

*Chairman.*

**Chapter One, Part A, Section 4(b) Departures**

1. *Amendment:* Chapter One, Part A (4)(b) is amended in the first sentence by deleting "* * * that was" and inserting in lieu thereof "of a kind, or to a degree,".

Chapter One, Part A, section 4(b) is amended in the second sentence of the last paragraph by deleting "Part H" and inserting in lieu thereof "Part K (Departures)", and in the third sentence of the last paragraph by deleting "Part H" and inserting in lieu thereof "Part K".

*Reason for Amendment:* The purposes of this amendment are to conform the quotation to the statute, as amended by Section 3 of the Sentencing Act of 1987, and to correct a clerical error.

2. *Amendment:* Chapter One, Part A, section 4(b) is amended in the first sentence of the fourth paragraph by deleting "three" and inserting in lieu thereof "two"; in the fourth paragraph by deleting: "The first kind, which will most frequently be used, is in effect an interpolation between two adjacent, numerically oriented guideline rules. A specific offense characteristic, for example, might require an increase of four levels for serious bodily injury but two levels for bodily injury. Rather than requiring a court to force middle instances into either the 'serious' or the 'simple' category, the guideline commentary suggests that the court may interpolate and select a midpoint increase of three levels. The Commission has decided to call such an interpolation a 'departure' in light of the legal views that a guideline providing for a range of increases in offense levels may violate the statute's 25 percent rule (though other have presented contrary legal arguments). Since interpolations are technically departures, the courts will have to provide reasons for their selection, and it will be subject to review for 'reasonableness' on appeal. The Commission believes, however, that a simple reference by the court to the 'mid-category' nature of the facts will typically provide sufficient reason. It does not foresee serious practical problems arising out of the application of the appeal provisions to this form of departure."; in the first sentence of the fifth paragraph by deleting "second" and inserting in lieu thereof "first"; and, in the first sentence of the sixth paragraph by deleting "third" and inserting in lieu thereof "second".

*Reason for Amendment:* This amendment eliminates references to interpolation as a special type of departure. The Commission has reviewed the discussion of interpolation in Chapter One, which has been read as describing "interpolation" as a departure from an offense level rather than from the guideline range established after the determination of an offense level. The Commission concluded that it is simpler to add intermediate offense level adjustments to the guidelines in the cases where interpolation is most likely to be considered (i.e., degree of bodily injury). This amendment is not intended to preclude interpolation in other cases; where appropriate, the court will be able to achieve the same result by use of the regular departure provisions.

*§ 1B1.1 (Application Instructions)*

3. *Amendment:* Section 1B1.1(a) is amended by deleting "guideline section in Chapter Two most applicable to the statute of conviction" and inserting in lieu thereof "applicable offense guideline section from Chapter Two", and by deleting: "If more than one guideline is referenced for the particular statute, select the guideline most appropriate for the conduct of which the defendant was convicted.".

*Reason for Amendment:* The purposes of this amendment are to clarify the guideline and conform the language to § 1B1.2.

4. *Amendment:* Section 1B1.1(e) is amended by deleting "The resulting offense level is the total offense level.".

Section 1B1.1(g) is amended by deleting "total", and by inserting "determined above" immediately following "category".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

5. *Amendment:* The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(c) by deleting "firearm or other dangerous weapon" and inserting in lieu thereof "dangerous weapon (including a firearm)".

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(d) by inserting the following additional sentence:

"Where an object that appeared to be a dangerous weapon was brandished, displayed, or possessed, treat the object as a dangerous weapon.".

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(g) by deleting "firearm or other dangerous weapon" the first time it appears and inserting in lieu thereof "dangerous weapon (including a firearm)".

The Commentary to § 1B1.1 captioned "Application Notes" is amended by inserting the following additional Note:

"5. Where two or more guideline provisions appear equally applicable, but the guidelines authorize the application of only one such provision, use the provision that results in the greater offense level. E.g., in § 2A2.2(b)(2), if a firearm is both discharged and brandished, the provision applicable to the discharge of the firearm would be used.".

*Reason for Amendment:* The purposes of this amendment are to clarify the definition of a dangerous weapon; and to clarify that when two or more guideline provisions appear equally applicable, but the guidelines authorize the application of only one such provision, the provision that results in the greater offense level is to be used.

6. *Amendment:* The Commentary to § 1B1.1 captioned "Application Notes" is amended by inserting as an additional Note:

"5. In the case of a defendant subject to a sentence enhancement under 18 U.S.C. § 3147 (Penalty for an Offense Committed While on Release), see § 2J1.7 (Commission of Offense While on Release).".

*Reason for Amendment:* The purpose of this amendment is to clarify the treatment of a specific enhancement provision.

*§ 1B1.2 (Applicable Guidelines)*

7. *Amendment:* Section 1B1.2(a) is amended in the first sentence by deleting "The court shall apply" and inserting in lieu thereof "Determine"; and in the second sentence by deleting "the court shall apply" and inserting in lieu thereof "determine", and by deleting "guideline in such chapter" and inserting in lieu thereof "offense guideline section in Chapter Two".

*Reason for Amendment:* The purposes of this amendment are to clarify the guideline and to make the phraseology of this subsection more consistent with that of §§ 1B1.1 and 1B1.2(b).

8. *Amendment:* Section 1B1.2(a) is amended in the first sentence by inserting immediately before the period "(i.e., the offense conduct charged in the count of the indictment or information of which the defendant was convicted)".

The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 1 by deleting:

"As a general rule, the court is to apply the guideline covering the offense conduct most applicable to the offense of conviction. Where a particular statute proscribes a variety of conduct which might constitute the subject of different guidelines, the court will decide which guideline applies based upon the nature of the offense conduct charged.",

and inserting in lieu thereof:

"As a general rule, the court is to use the guideline section from Chapter Two most applicable to the offense of conviction. The Statutory Index (Appendix A) provides a listing to assist in this determination. When a particular statute proscribes only a single type of criminal conduct, the offense of conviction and the conduct proscribed by the statute will coincide, and there will be only one offense guideline referenced. When a particular statute proscribes a variety of conduct that might constitute the subject of different offense guidelines, the court will determine which guideline section applies based upon the nature of the offense conduct charged in the count of which the defendant was convicted.".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline and Commentary.

9. *Amendment:* Section 1B1.2(a) is amended by deleting:

"Similarly, stipulations to additional offenses are treated as if the defendant had been convicted of separate counts charging those offenses.",

and by inserting the following as additional subsections:

"(c) A conviction by a plea of guilty or nolo contendere containing a stipulation that specifically establishes the commission of additional offense(s) shall be treated as if the defendant had been convicted of additional count(s) charging those offense(s).

(d) A conviction on a count charging a conspiracy to commit more than one offense shall be treated as if the defendant had been convicted on a separate count of conspiracy for each offense that the defendant conspired to commit.".

The Commentary to § 1B1.2 captioned "Application Notes" is amended in the second paragraph of Note 1 by deleting:

"Similarly, if the defendant pleads guilty to one robbery but admits the elements of two additional robberies as part of a plea agreement, the guideline applicable to three robberies is to be applied.",

and by inserting the following as additional Notes:

"4. Subsections (c) and (d) address circumstances in which the provisions of Chapter Three, Part D (Multiple Counts) are to be applied although there may be only one count of conviction. Subsection (c) provides that in the case of a stipulation to the commission of additional offense(s), the guidelines are to be applied as if the defendant had been convicted of an additional count for each of the offenses stipulated. For example, if the defendant is convicted of one count of robbery but, as part of a plea agreement, admits to having committed two additional robberies, the guidelines are to be applied as if the defendant had been convicted of three counts of robbery. Subsection (d) provides that a conviction on a conspiracy count charging conspiracy to commit more than one offense is treated as if the defendant had been convicted of a separate conspiracy count for each offense that he conspired to commit. For example, where a conviction on a single count of conspiracy establishes that the defendant conspired to commit three robberies, the guidelines are to be applied as if the defendant had been convicted on one count of conspiracy to commit the first robbery, one count of conspiracy to commit the second robbery, and one count of conspiracy to commit the third robbery.

5. Particular care must be taken in applying subsection (d) because there are cases in which the jury's verdict does not establish which offense(s) was the object of the conspiracy. In such cases, subsection (d) should only be applied with respect to an object offense alleged in the conspiracy count if the court, were it sitting as a trier of fact, would convict the defendant of conspiring to commit that object offense. Note, however, if the object offenses specified in the conspiracy count would be grouped together under § 3D1.2(d) (e.g., a conspiracy to steal three government checks) it is not necessary to engage in the foregoing analysis, because § 1B1.3(a)(2) governs consideration of the defendant's conduct.".

*Reason for Amendment:* This amendment creates a new subsection (subsection (d)) to specify that a conviction of conspiracy to commit more than one offense is treated for guideline purposes as if the defendant had been convicted of a separate conspiracy count for each offense that the defendant conspired to commit. The current instruction found only at Application Note 9 of § 3D1.2 is inadequate. For consistency, material now contained at § 1B1.2(a) concerning stipulations to having committed additional offenses is moved to a new subsection (subsection (c)).

Additional Commentary (Application Note 5) is provided to address cases in which the jury's verdict does not specify how many or which offenses were the object of the conspiracy of which the defendant was convicted. Compare U.S. v. Johnson, 713 F.2d 633, 645–46 (11th Cir. 1983) (conviction stands if there is sufficient proof with respect to any one of the objectives), with U.S. v. Tarnopol, 561 F.2d 466 (3d Cir. 1977) (failure of proof with respect to any one of the objectives renders the conspiracy conviction invalid). In order to maintain consistency with other § 1B1.2(a) determinations, this decision should be governed by a reasonable doubt standard. A higher standard of proof should govern the creation of what is, in effect, a new count of conviction for the purposes of Chapter Three, Part D (Multiple Counts). Because the guidelines do not explicitly establish standards of proof, the proposed new application note calls upon the court to determine which offense(s) was the object of the conspiracy as if it were

"sitting as a trier of fact." The foregoing determination is not required, however, in the case of offenses that are grouped together under § 3D1.2(d) (e.g., fraud and theft) because § 1B1.3(a)(2) governs consideration of the defendant's conduct.

*§ 1B1.3 Relevant Conduct (Factors that Determine the Guideline Range)*

10. *Amendment:* Section 1B1.3 is amended in subsection (a)(3) by deleting "or risk of harm", and by deleting "if the harm or risk was caused intentionally, recklessly or by criminal negligence, and all harm or risk" and inserting in lieu thereof "and all harm".

Section 1B1.3 is amended by deleting subsection (a)(4) in its entirety, by renumbering subsection (a)(5) as (a)(4), and by inserting "and" at the end of subsection (a)(3) immediately following the semicolon.

The Commentary to § 1B1.3 captioned "Background" is amended by deleting the fifth paragraph in its entirety as follows:

"Subsection (a)(4) requires consideration of the defendant's 'state of mind, intent, motive or purpose in committing the offense.' The defendant's state of mind is an el ement of the offense that may constitute a specific offense characteristic. See, e.g., § 2A1.4 (Involuntary Manslaughter) (distinction made between recklessness and criminal negligence). The guidelines also incorporate broader notions of intent or purpose that are not elements of the offense, e.g., whether the offense was committed for profit, or for the purpose of facilitating a more serious offense. Accordingly, such factors must be considered in determining the applicable guideline range.",

and by inserting in lieu thereof:

"Subsection (a)(4) requires consideration of any other information specified in the applicable guideline. For example, § 2A1.4 (Involuntary Manslaughter) specifies consideration of the defendant's state of mind; § 2K1.4 (Arson; Property Damage By Use of Explosives) specifies consideration of the risk of harm created.".

*Reason for Amendment:* The purpose of this amendment is to delete language pertaining to "risk of harm" and "state of mind" as unnecessary. Cases in which the guidelines specifically address risk of harm or state of mind are covered in the amended guideline under subsection (a)(4) (formerly subsection (a)(5)). In addition, the amendment deletes reference to harm committed "intentionally, recklessly, or by criminal negligence" as unnecessary and potentially confusing.

11. *Amendment:* Section 1B1.3 is amended by deleting "The conduct that is relevant to determining the applicable guideline range includes that set forth below.".

Section 1B1.3(b) is amended by deleting:

"(b) Chapter Four (Criminal History and Criminal Livelihood). To determine the criminal history category and the applicability of the career offender and criminal livelihood guidelines, the court shall consider all conduct relevant to a determination of the factors enumerated in the respective guidelines in Chapter Four.",

and inserting in lieu thereof:

"(b) Chapters Four (Criminal History and Criminal Livelihood) and Five (Determining the Sentence). Factors in Chapters Four and Five that establish the guideline range shall be determined on the basis of the conduct and information specified in the respective guidelines.".

The Commentary to § 1B1.3 captioned "Background" is amended in the second paragraph by deleting "Chapter Four" and inserting in lieu thereof "Chapters Four and Five", and by deleting "that Chapter" and inserting in lieu thereof "those Chapters".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

12. *Amendment:* The Commentary to § lBl.3 captioned "Application Notes" is amended in Note 1 by deleting:

"If the conviction is for conspiracy, it includes conduct in furtherance of the conspiracy that was known to or was reasonably foreseeable by the defendant. If the conviction is for solicitation, misprision or accessory after the fact, it includes all conduct relevant to determining the offense level for the underlying offense that was known to or reasonably should have been known by the defendant. See generally §§ 2Xl.1–2X4.1.",

and inserting in lieu thereof:

"In the case of criminal activity undertaken in concert with others, whether or not charged as a conspiracy, the conduct for which the defendant is 'otherwise accountable' also includes conduct of others in furtherance of the execution of the jointly-undertaken criminal activity that was reasonably foreseeable by the defendant. Because a count may be broadly worded and include the conduct of many participants over a substantial period of time, the scope of the jointly-undertaken criminal activity, and hence relevant conduct, is not necessarily the same for every participant. Where it is established that the conduct was neither within the scope of the defendant's agreement, nor was reasonably foreseeable in connection with the criminal activity the defendant agreed to jointly undertake, such conduct is not included in establishing the defendant's offense level under this guideline.

In the case of solicitation, misprision, or accessory after the fact, the conduct for which the defendant is 'otherwise accountable' includes all conduct relevant to determining the offense level for the underlying offense that was known, or reasonably should have been known, by the defendant.

**Illustrations of Conduct for Which the Defendant Is Accountable**

a. Defendant A, one of ten off-loaders hired by Defendant B, was convicted of importation of marihuana, as a result of his assistance in off-loading a boat containing a one-ton shipment of marihuana. Regardless of the number of bales of marihuana that he actually unloaded, and notwithstanding any claim on his part that he was neither aware of, nor could reasonably foresee, that the boat contained this quantity of marihuana, Defendant A is held accountable for the entire one-ton quantity of marihuana on the boat because he aided and abetted the unloading, and hence the importation, of the entire shipment.

b. Defendant C, the getaway driver in an armed bank robbery in which $15,000 is taken and a teller is injured, is convicted of the substantive count of bank robbery. Defendant C is accountable for the money taken because he aided and abetted the taking of the money. He is accountable for the injury inflicted because he participated in concerted criminal conduct that he could reasonably foresee might result in the infliction of injury.

c. Defendant D pays Defendant E a small amount to forge an endorsement on an $800 stolen government check. Unknown to Defendant E, Defendant D then uses that check as a down payment in a scheme to fraudulently obtain $15,000 worth of merchandise. Defendant E is convicted of forging the $800 check. Defendant E is not accountable for the $15,000 because the fraudulent scheme to obtain $15,000 was beyond the scope of, and not reasonably foreseeable in connection with, the criminal activity he jointly undertook with Defendant D.

d. Defendants F and G, working together, design and execute a scheme to sell fraudulent stocks by telephone. Defendant F fraudulently obtains $20,000. Defendant G fraudulently obtains $35,000. Each is convicted of mail fraud. Each defendant is accountable for the entire amount ($55,000) because each aided and abetted the other in the fraudulent conduct. Alternatively, because Defendants F and G engaged in concerted criminal activity, each is accountable for the entire $55,000 loss because the conduct of each was in furtherance of the jointly undertaken criminal activity and was reasonably foreseeable.

e. Defendants H and I engaged in an ongoing marihuana importation conspiracy in which Defendant J was hired only to help off-load a single shipment. Defendants H, I, and J may be included in a single count charging conspiracy to import marihuana. For the purposes of determining the offense level under this guideline, Defendant J is accountable for the entire single shipment of marihuana he conspired to help import and any acts or omissions in furtherance of the importation that were reasonably foreseeable. He is not accountable for prior or subsequent shipments of marihuana imported by Defendants H or I if those acts were beyond the scope of, and not reasonably foreseeable in connection with, the criminal activity he agreed to jointly

undertake with Defendants H and I (i.e., the importation of the single shipment of marihuana).".

*Reason for Amendment:* The purpose of this amendment is to clarify the definition of conduct for which the defendant is "otherwise accountable."

*§ 1B1.5 Interpretation of References to Other Offense Guidelines*

13. *Amendment:* Section 1B1.5 is amended by deleting "adjustments for", and by inserting "and cross references" immediately before the period at the end of the sentence.

The Commentary to § 1B1.5 captioned "Application Note" is amended in Note 1 by inserting "and cross references" immediately before "as well as the base offense level".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline and Commentary.

14. *Amendment:* The Commentary to § 1B1.5 captioned "Application Note" is amended in Note 1 by deleting: "If the victim was vulnerable, the adjustment from § 3A1.1 (Vulnerable Victim) also would apply.".

*Reason for Amendment:* The purpose of this amendment is to delete an unnecessary sentence. No substantive change is made.

*§ 1B1.9 Petty Offenses*

15. *Amendment:* Section 1B1.9 is amended in the title by deleting "Petty Offenses" and inserting in lieu thereof "Class B or C Misdemeanors and Infractions".

Section 1B1.9 is amended by deleting "(petty offense)".

The Commentary to § 1B1.9 captioned "Application Notes is amended in the first sentence of Note l by deleting "petty offense" and inserting in lieu thereof "Class B or C misdemeanor or an infraction", in the second sentence of Note 1 by deleting "A petty offense is any offense for which the maximum sentence that may be imposed does not exceed six months' imprisonment." and inserting in lieu thereof "A Class B misdemeanor is any offense for which the maximum authorized term of imprisonment is more than thirty days but not more than six months; a Class C misdemeanor is any offense for which the maximum term of imprisonment is more than five days but not more than thirty days; an infraction is any offense for which the maximum authorized term of imprisonment is not more than five days.", in the first sentence of Note 2 by deleting "petty offenses" and inserting in lieu thereof "Class B or C misdemeanors or infractions", in the second sentence of Note 2 by deleting "petty" and inserting in lieu thereof "such", in the third sentence of Note 2 by deleting "petty offense" and inserting in lieu thereof "Class B or C misdemeanor or infraction" and, in Note 3 by deleting:

"3. All other provisions of the guidelines should be disregarded to the extent that they purport to cover petty offenses.".

The Commentary to § 1B1.9 captioned "Background" is amended by deleting:

"voted to adopt a temporary amendment to exempt all petty offenses from the coverage of the guidelines. Consequently, to the extent that some published guidelines may appear to cover petty offenses, they should be disregarded even if they appear in the Statutory Index",

and inserting in lieu thereof "exempted all Class B and C misdemeanors and infractions from the coverage of the guidelines".

*Reason for Amendment:* Section 7089 of the Anti-Drug Abuse Act of 1988 revises the definition of a petty offense so that it no longer exactly corresponds with a Class B or C misdemeanor or infraction. Under the revised definition, a Class B or C misdemeanor or infraction that has an authorized fine of more than $5,000 for an individual (or more than $10,000 for an organization) will not be a petty offense. This legislative revision does not affect the maximum terms of imprisonment authorized. The maximum authorized term of imprisonment remains controlled by the grade of the offense (i.e., the maximum term of imprisonment remains five days for an infraction, thirty days for a Class C misdemeanor, and six months for a Class B misdemeanor). Because the statutory grade of the offense (i.e., a Class B or C misdemeanor or an infraction) is the more relevant definition for guideline purposes, this amendment deletes the references in § 1B1.9 to "petty offenses" and in lieu thereof inserts references to "Class B and C misdemeanors and infractions."

In addition, this amendment converts the wording of the Commission's emergency amendment at § 1B1.9 (effective June 15, 1988) into that appropriate for a permanent amendment.

*§ 2A1.1 First Degree Murder*

16. *Amendment:* The Commentary to § 2A1.1 captioned "Statutory Provision" is amended by deleting "Provision" and inserting in lieu thereof "Provisions", and by inserting "; 21 U.S.C. 848(e)" at the end immediately before the period.

The Commentary to § 2A1.1 captioned "Application Note" is amended in the caption by deleting "Note" and inserting in lieu thereof "Notes", and by inserting the following additional note:

"2. If the defendant is convicted under 21 U.S.C. 848(e), a sentence of death may be imposed under the specific provisions contained in that statute. This guideline applies when a sentence of death is not imposed.".

The Commentary to § 2A1.1 captioned "Background" is amended by deleting the word "statute" and inserting in lieu thereof "18 U.S.C. 1111" and by adding the following immediately after the first sentence:

"Prior to the applicability of the Sentencing Reform Act of 1984, a defendant convicted under this statute and sentenced to life imprisonment could be paroled (see 18 U.S.C. 4205(a)). Because of the abolition of parole by that Act, the language of 18 U.S.C. 1111(b) (which was not amended by the Act) appears on its face to provide a mandatory minimum sentence of life imprisonment for this offense. Other provisions of the Act, however, classify this offense as a Class A felony (see 18 U.S.C. 3559(a)(1)), for which a term of imprisonment of any period of time is authorized as an alternative to imprisonment for the duration of the defendant's life (see 18 U.S.C. 3559(b), 3581(b)(1), as amended); hence, the relevance of the discussion in Application Note 1, supra, regarding circumstances in which a sentence less than life may be appropriate for a conviction under this statute."

The Commentary to § 2A1.1 captioned "Background" is amended by inserting at the end thereof:

"The maximum penalty authorized under 21 U.S.C. 848(e) is death or life imprisonment. If a term of imprisonment is imposed, the statutorily required minimum term is twenty years.".

*Reason for Amendment:* The purpose of this amendment is to incorporate new first-degree murder offenses created by Section 7001 of the Anti-Drug Abuse Act of 1988 where the death penalty is not imposed. This amendment also clarifies the existing Commentary to this guideline.

*§ 2A2.1 Assault With Intent to Commit Murder; Conspiracy or Solicitation to Commit Murder; Attempted Murder*

17. *Amendment:* Section 2A2.1 is amended in subsection (b)(2)(B) by deleting "a firearm or a dangerous weapon" and inserting in lieu thereof "a dangerous weapon (including a firearm)", and in subsection (b)(2)(C) by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "a dangerous weapon (including a firearm)".

*Reason for Amendment:* The purposes of this amendment are to clarify that a firearm is a type of dangerous weapon and to remove the inconsistency in the language between specific offense

characteristic subdivisions (b)(2)(B) and (b)(2)(C).

18. *Amendment:* Section 2A2.1(b)(3) is amended by inserting the following additional subdivisions:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), add 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), add 5 levels.".

The Commentary to § 2A2.1 captioned "Application Notes" is amended by deleting "Notes" from the caption and inserting in lieu thereof "Note", and by deleting:

"2. If the degree of bodily injury falls between two injury categories, use of the intervening level (i.e., interpolation) is appropriate."

*Reason for Amendment:* The purpose of this amendment is to provide intermediate adjustment levels for the degree of bodily injury.

*§ 2A2.2 Aggravated Assault*

19. *Amendment:* Section 2A2.2 is amended in subsection (b)(2)(B) by deleting "a firearm or a dangerous weapon" and inserting in lieu thereof "a dangerous weapon (including a firearm)", and in subsection (b)(2)(C) by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "a dangerous weapon (including a firearm)".

*Reason for Amendment:* The purposes of this amendment are to clarify that a firearm is a type of dangerous weapon and to remove the inconsistency in language between specific offense characteristic subdivisions (b)(2)(B) and (b)(2)(C).

20. *Amendment:* Section 2A2.2(b)(3) is amended by inserting the following additional subdivisions:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), add 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), add 5 levels.".

The Commentary to § 2A2.2 captioned "Application Notes" is amended by deleting:

"3. If the degree of bodily injury falls between two injury categories, use of the intervening level (i.e., interpolation) is appropriate.",

and by renumbering Note 4 as Note 3.

*Reason for Amendment:* The purpose of this amendment is to provide intermediate adjustment levels for the degree of bodily injury.

*§ 2A2.3 Minor Assault*

21. *Amendment:* Section 2A2.3(a)(1) is amended by deleting "striking, beating, or wounding" and inserting in lieu thereof "physical contact, or if a dangerous weapon (including a firearm) was possessed and its use was threatened".

The Commentary to § 2A2.3 captioned "Application Notes" is amended by deleting:

"2. 'Striking, beating, or wounding' means conduct sufficient to violate 18 U.S.C. 113(d).",

and inserting in lieu thereof:

"2. Definitions of 'firearm' and 'dangerous weapon' are found in the Commentary to § 1B1.1 (Application Instructions).".

The Commentary to § 2A2.3 captioned "Background" is amended by deleting "The distinction for striking, beating, or wounding reflects the statutory distinction found in 18 U.S.C. 113(d) and (e).".

*Reason for Amendment:* This amendment eliminates the phrase "striking, wounding, or beating" (a statutory phrase dealing with a petty offense) in favor of "physical contact," a clearer standard. The amendment also provides an enhanced offense level for the case in which a weapon is possessed and its use is threatened.

22. *Amendment:* The Commentary to § 2A2.3 captioned "Statutory Provisions" is amended by deleting "113(d), 113(e),".

*Reason for Amendment:* The purpose of this amendment is to delete references to petty offenses.

*§ 2A2.4 Obstructing or Impeding Officers*

23. *Amendment:* The Commentary to § 2A2.4 captioned "Application Notes" is amended in Note 1 by deleting: "Do not apply § 3A1.2 (Official Victim).", and by inserting as the last sentence: "Therefore, do not apply § 3A1.2 (Official Victim) unless subsection (c) requires the offense level to be determined under § 2A2.2 (Aggravated Assault).".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

24. *Amendment:* Section 2A2.4(b)(1) is amended by deleting "striking, beating, or wounding", and inserting in lieu thereof "physical contact, or if a dangerous weapon (including a firearm) was possessed and its use was threatened".

The Commentary to § 2A2.4 is amended by deleting:

"2. 'Striking, beating, or wounding' is discussed in the Commentary to § 2A2.3 (Minor Assault).",

and inserting in lieu thereof:

"2. Definitions of 'firearm' and 'dangerous weapon' are found in the Commentary to § 1B1.1 (Application Instructions).".

*Reason for Amendment:* This amendment eliminates the phrase "striking, wounding, or beating" (a statutory phrase dealing with a petty offense) in favor of "physical contact," a clearer standard. The amendment also provides an enhanced offense level for the case in which a weapon is possessed and its use is threatened.

*§ 2A3.1 Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse*

25. *Amendment:* Section 2A3.1(b)(1) is amended by deleting:

"criminal sexual abuse was accomplished as defined in 18 U.S.C. § 2241",

and inserting in lieu thereof:

"offense was committed by the means set forth in 18 U.S.C. 2241 (a) or (b)".

The Commentary to § 2A3.1 captioned "Application Notes" is amended in Note 2 by deleting:

" 'Accomplished as defined in 18 U.S.C. 2241' means accomplished by force, threat, or other means as defined in 18 U.S.C. 2241 (a) or (b) (i.e., by using force against that person; by threatening or placing that other person",

and inserting in lieu thereof:

" 'The means set forth in 18 U.S.C. 2241 (a) or (b)' are: by using force against the victim; by threatening or placing the victim",

by deleting the parenthesis immediately before the period at the end of the Note, and by inserting at the end of the Note the following additional sentence:

"This provision would apply, for example, where any dangerous weapon was used, brandished, or displayed to intimidate the victim.".

The Commentary to § 2A3.1 captioned "Background" is amended in the fifth sentence of the first paragraph by deleting the comma immediately following "force" and inserting in lieu thereof a semicolon, and by deleting "kidnapping," and inserting in lieu thereof "or kidnapping;", and in the last sentence of the last paragraph by deleting "serious physical" and inserting in lieu thereof "permanent, life-threatening, or serious bodily".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline and Commentary.

26. *Amendment:* Section 2A3.1(b)(4) is amended by inserting immediately before the period at the end of the sentence:

"; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels".

*Reason for Amendment:* The purpose of this amendment is to provide an intermediate adjustment level for degree of bodily injury.

*§ 2A3.2 Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt to Commit Such Acts*

27. *Amendment:* The Commentary to § 2A3.2 captioned "Statutory Provision" and "Background" is amended by deleting "2243" wherever it appears and inserting in lieu thereof "2243(a)".

The Commentary to § 2A3.2 captioned "Background" is amended by deleting "statutory rape, i.e.,", and by deleting "victim's incapacity to give lawful consent" and inserting in lieu thereof "age of the victim".

*Reason for Amendment:* The purposes of this amendment are to clarify that the relevant factor is the age of the victim, and to provide a more specific reference to the underlying statute.

*§ 2A3.3 Criminal Sexual Abuse of a Ward (Statutory Rape) or Attempt to Commit Such Acts*

28. *Amendment:* Section 2A3.3 is amended in the title by deleting "(Statutory Rape)".

The Commentary to § 2A3.3 captioned "Statutory Provision" is amended by deleting "§ 2243" and inserting in lieu thereof "§ 2243(b)".

*Reason for Amendment:* The purposes of this amendment are to delete inapt language from the title and to provide a more specific reference to the underlying statute.

*§ 2A3.4 Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact*

29. *Amendment:* Section 2A3.4 and the accompanying commentary is amended by deleting:

"§ 2A3.4. Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact

(a) Base Offense Level: 6

(b) Specific Offense Characteristics

(1) If the abusive sexual contact was accomplished as defined in 18 U.S.C. 2241 (including, but not limited to, the use or display of any dangerous weapon), increase by 9 levels.

(2) If the abusive sexual contact was accomplished as defined in 18 U.S.C. 2242, increase by 4 levels.

**Commentary**

*Statutory Provisions:* 18 U.S.C. 2244, 2245.

*Application Notes:*

1. 'Accomplished as defined in 18 U.S.C. 2241' means accomplished by force, threat, or other means as defined in 18 U.S.C. 2241(a) or (b) (i.e., by using force against that person; by threatening or placing that other person in fear that any person will be subject to death, serious bodily injury, or kidnapping; by rendering the victim unconscious; or by administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct).

2. 'Accomplished as defined in 18 U.S.C. 2242' means accomplished by threatening or placing the victim in fear (other than by threatening or placing the victim in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or when the victim is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act.

*Background:* This section covers abusive sexual contact not amounting to criminal sexual abuse (criminal sexual abuse is covered under § 2A3.1–3.3). Enhancements are provided for the use of force or threats. The maximum term of imprisonment authorized by statute for offenses covered in this section is five years (if accomplished as defined in 18 U.S.C. 2241), three years (if accomplished as defined in 18 U.S.C. 2242), and six months otherwise. The base offense level applies to conduct that is consensual.",

and inserting in lieu thereof:

*"§ 2A3.4. Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact*

(a) Base Offense Level:

(1) 16, if the offense was committed by the means set forth in 18 U.S.C. 2241(a) or (b);

(2) 12, if the offense was committed by the means set forth in 18 U.S.C. 2242;

(3) 10, otherwise.

(b) Specific Offense Characteristics

(1) If the victim had not attained the age of twelve years, increase by 4 levels; but if the resulting offense level is less than 16, increase to level 16.

(2) If the base offense level is determined under subsection (a)(1) or (2), and the victim had attained the age of twelve years but had not attained the age of sixteen years, increase by 2 levels.

**Commentary**

*Statutory Provision:* 18 U.S.C. 2244(a) (1), (2), (3).

*Application Notes:*

1. 'The means set forth in 18 U.S.C. 2241(a) or (b)' are by using force against the victim; by threatening or placing the victim in fear that any person will be subjected to death, serious bodily injury, or kidnapping; by rendering the victim unconscious; or by administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct.

2. 'The means set forth in 18 U.S.C. 2242' are by threatening or placing the victim in fear (other than by threatening or placing the victim in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or by victimizing an individual who is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act.

*Background:* This section covers abusive sexual contact not amounting to criminal sexual abuse (criminal sexual abuse is covered under § 2A3.1–3.3). Alternative base offense levels are provided to take account of the different means used to commit the offense. Enhancements are provided for victimizing children or minors. The enhancement under subsection (b)(2) does not apply, however, where the base offense level is determined under subsection (a)(3) because an element of the offense to which that offense level applies is that the victim had attained the age of twelve years but had not attained the age of sixteen years. For cases involving consensual sexual contact involving victims that have achieved the age of 12 but are under age 16, the offense level assumes a substantial difference in sexual experience between the defendant and the victim. If the defendant and the victim are similar in sexual experience, a downward departure may be warranted. For such cases, the Commission recommends a downward departure to the equivalent of an offense level of 6.".

*Reason for Amendment:* The purposes of the amendment are to make the offense levels under this guideline consistent with the structure of related guidelines (§§ 2A3.1, 2A3.2, 2G1.2, 2G2.1, and 2G2.2) and to reflect the increased maximum sentences for certain conduct covered by this guideline.

The amendment increases all offense levels, but in particular provides enhanced punishment for victimization of minors and children. The differentials between the alternative offense levels in this amendment are consistent with §§ 2A3.1 and 2G1.2. The enhancements that relate to the age of the victim are consistent with those in §§ 2G1.2, 2G2.1, and 2G2.2.

*§ 2A4.1 Kidnapping, Abduction, Unlawful Restraint*

30. *Amendment:* Section 2A4.1(b)(2) is amended by inserting immediately before the period at the end of the sentence:

"; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels".

*Reason for Amendment:* The purpose of this amendment is to provide an intermediate adjustment level for the degree of bodily injury.

*§ 2A5.2 Interference with Flight Crew Member or Flight Attendant*

31. *Amendment:* The Commentary to § 2A5.2 captioned "Application Note" is amended by deleting:

*"Application Note:*

1. If an assault occurred, apply the most analogous guideline from Part A, Subpart 2

(Assault) if the offense level under that guideline is greater.".

*Reason for Amendment:* The purpose of this amendment is to simplify the guideline by deleting redundant material.

*§ 2A5.3 Committing Certain Crimes Aboard Aircraft*

32. *Amendment:* The Commentary to § 2A5.3 captioned "Application Notes" is amended in Note 1 by deleting "that the defendant is convicted of violating" and inserting in lieu thereof "of which the defendant is convicted".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

*§ 2B1.1 Larceny, Embezzlement, and Other Forms of Theft*

33. *Amendment:* Section 2B1.1(b)(1) is amended by deleting:

| | Increase in Level |
|---|---|
| "Loss: | |
| (A) $100 or less | No increase. |
| (B) $101–$1,000 | Add 1. |
| (C) $1,001–$2,000 | Add 2. |
| (D) $2,001–$5,000 | Add 3. |
| (E) $5,001–$10,000 | Add 4. |
| (F) $10,001–$20,000 | Add 5. |
| (G) $20,001–$50,000 | Add 6. |
| (H) $50,001–$100,000 | Add 7. |
| (I) $100,001–$200,000 | Add 8. |
| (J) $200,001–$500,000 | Add 9. |
| (K) $500,001–$1,000,000 | Add 10. |
| (L) $1,000,001–$2,000,000 | Add 11. |
| (M) $2,000,001–$5,000,000. | Add 12. |
| (N) Over $5,000,000 | Add 13", |

and inserting in lieu thereof:

| | Increase in Level |
|---|---|
| "Loss (Apply the Greatest): | |
| (A) $100 or less | No increase. |
| (B) More than $100 | Add 1. |
| (C) More than $1,000 | Add 2. |
| (D) More than $2,000 | Add 3. |
| (E) More than $5,000 | Add 4. |
| (F) More than $10,000 | Add 5. |
| (G) More than $20,000 | Add 6. |
| (H) More than $40,000 | Add 7. |
| (I) More than $70,000 | Add 8. |
| (J) More than $120,000 | Add 9. |
| (K) More than $200,000 | Add 10. |
| (L) More than $350,000 | Add 11. |
| (M) More than $500,000 | Add 12. |
| (N) More than $800,000 | Add 13. |
| (O) More than $1,500,000 | Add 14. |
| (p) More than $2,500,000 | Add 15. |
| (Q) More than $5,000,000 | Add 16. |
| (R) More than $10,000,000. | Add 17. |
| (S) More than $20,000,000. | Add 18. |
| (T) More than $40,000,000. | Add 19. |
| (U) More than $80,000,000. | Add 20.". |

*Reason for Amendment:* The purposes of this amendment are to conform the theft and fraud loss tables to the tax evasion table in order to remove an unintended inconsistency between these tables in cases where the amount is greater than $40,000, to increase the offense levels for larger losses to provide additional deterrence and better reflect the seriousness of the conduct, and to eliminate minor gaps in the loss table.

34. *Amendment:* Section 2B1.1(b)(6) is amended by deleting "organized criminal activity" and inserting in lieu thereof "an organized scheme to steal vehicles or vehicle parts".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by deleting:

"8. 'Organized criminal activity' refers to operations such as car theft rings or 'chop shops,' where the scope of the activity is clearly significant.",

and inserting in lieu thereof:

"8. Subsection (b)(6), referring to an 'organized scheme to steal vehicles or vehicle parts,' provides an alternative minimum measure of loss in the case of an ongoing, sophisticated operation such as an auto theft ring or 'chop shop'. 'Vehicles' refers to all forms of vehicles, including aircraft and watercraft.".

The Commentary to § 2B1.1 captioned "Background" is amended by deleting:

"A minimum offense level of 14 is provided for organized criminal activity, i.e., operations such as car theft rings or 'chop shops,' where the scope of the activity is clearly significant but difficult to estimate. The guideline is structured so that if reliable information enables the court to estimate a volume of property loss that would result in a higher offense level, the higher offense level would govern.",

and inserting in lieu thereof:

"A minimum offense level of 14 is provided for offenses involving an organized scheme to steal vehicles or vehicle parts. Typically, the scope of such activity is substantial (i.e., the value of the stolen property, combined with an enhancement for 'more than minimal planning' would itself result in an offense level of at least 14), but the value of the property is particularly difficult to ascertain in individual cases because the stolen property is rapidly resold or otherwise disposed of in the course of the offense. Therefore, the specific offense characteristic of 'organized scheme' is used as an alternative to 'loss' in setting the offense level.".

*Reason for Amendment:* The purpose of this amendment is to clarify the coverage of a specific offense characteristic.

35. *Amendment:* The Commentary to § 2B1.1 captioned "Background" is amended in the first paragraph by deleting "§ 5A1.1" and inserting in lieu thereof "Chapter Five, Part A".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

*§ 2B1.2 Receiving Stolen Property*

36. *Amendment:* Section 2B1.2 is amended in the title by inserting ", Transporting, Transferring, Transmitting, or Possessing" immediately after "Receiving".

Section 2B1.2(b)(3)(A) is amended by inserting "receiving and" immediately before "selling".

The Commentary to § 2B1.2 captioned "Application Notes" is amended by deleting Note 1 as follows:

1. "If the defendant is convicted of transporting stolen property, either § 2B1.1 or this guideline would apply, depending upon whether the defendant stole the property.",

and by renumbering Notes 2 and 3 as Notes 1 and 2 respectively.

*Reason for Amendment:* The purpose of this amendment is to clarify the nature of the cases to which this guideline applies.

37. *Amendment:* Section 2B1.2 is amended by renumbering subsection (b)(4) as (b)(5), and by inserting a new subsection (b)(4) as follows:

"(4) If the property included undelivered United States mail and the offense level as determined above is less than level 6, increase to level 6.".

The Commentary to § 2B1.2 captioned "Application Notes", as amended, is further amended by inserting the following as an additional Note:

"3. 'Undelivered United States mail' means mail that has not actually been received by the addressee or his agent (e.g., it includes mail that is in the addressee's mail box).".

*Reason for Amendment:* The purpose of this amendment is to add a specific offense characteristic where stolen property involved "undelivered mail" to conform to § 2B1.1.

38. *Amendment:* Section 2B1.2(b)(5) [formerly (b)(4)] is amended by deleting "organized criminal activity" and inserting in lieu thereof "an organized scheme to receive stolen vehicles or vehicle parts".

The Commentary to § 2B1.2 captioned "Application Notes" is amended by inserting the following as an additional Note:

"4. Subsection (b)(5), referring to an 'organized scheme to receive stolen vehicles or vehicle parts,' provides an alternative minimum measure of loss in the case of an ongoing, sophisticated operation such as an auto theft ring or 'chop shop.' 'Vehicles' refers to all forms of vehicles, including aircraft and watercraft. See Commentary to § 2B1.1 (Larceny, Embezzlement, and other Forms of Theft).".

*Reason for Amendment:* The purpose of this amendment is to clarify the coverage of a specific offense characteristic.

*§ 2B2.1 Burglary of Residence*

39. *Amendment:* Section 2B2.1(b)(2) is amended in the first column of the table by deleting:

"Loss ..... Increase in Level
(A) $2,500 or less ..... no increase
(B) $2,501–$10,000 ..... add 1
(C) $10,001–$50,000 ..... add 2
(D) $50,001–$250,000 ..... add 3
(E) $250,001–$1,000,000 ..... add 4
(F) $1,000,001–$5,000,000 ..... add 5
(G) more than $5,000,000 ..... add 6",

and inserting in lieu thereof:

"Loss (Apply the Greatest)...Increase in Level
(A) $2,500 or less ..... no increase
(B) More than $2,500 ..... add 1
(C) More than $10,000 ..... add 2
(D) More than $50,000 ..... add 3
(E) More than $250,000 ..... add 4
(F) More than $800,000 ..... add 5
(G) More than $1,500,000 ..... add 6
(H) More than $2,500,000 ..... add 7
(I) More than $5,000,000 ..... add 8".

*Reason for Amendment:* The purposes of this amendment are to eliminate minor gaps in the loss table and to conform the offense levels for larger losses to the amended loss table at § 2B1.1.

40. *Amendment:* Section 2B2.1(b)(4) is amended by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "a dangerous weapon (including a firearm)".

The Commentary to § 2B2.1 captioned "Application Notes" is amended in Note 4 by deleting "with respect to a firearm or other dangerous weapon" and inserting in lieu thereof "to possession of a dangerous weapon (including a firearm) that was".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline and Commentary.

*§ 2B2.2 Burglary of Other Structures*

41. *Amendment:* Section 2B2.2(b)(4) is amended by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "a dangerous weapon (including a firearm)".

The Commentary to § 2B2.2 captioned "Application Notes" is amended in Note 4 by deleting "with respect to a firearm", and inserting in lieu thereof "to possession of a dangerous weapon (including a firearm) that was".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline and Commentary.

*§ 2B2.3 Trespass*

42. *Amendment:* Section 2B2.3(b)(2) is amended by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "a dangerous weapon (including a firearm)".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

43. *Amendment:* Section 2B2.3(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics".

The Commentary to § 2B2.3 captioned "Statutory Provisions" is amended by deleting "Provisions" and inserting in lieu thereof "Provision", and by deleting "18 U.S.C. 1382, 1854" and inserting in lieu thereof "42 U.S.C. 7270b".

*Reason for Amendment:* The purposes of this amendment are to correct a clerical error, to delete a reference to a petty offense and an incorrect statutory reference, and to insert an additional statutory reference.

*§ 2B3.1 Robbery*

44. *Amendment:* Section 2B3.1(a) is amended by deleting "18" and inserting in lieu thereof "20".

Section 2B3.1(b) is amended by deleting subsections (1) and (2) and inserting in lieu thereof:

"(1) If the offense involved robbery or attempted robbery of the property of a financial institution or post office, increase by 2 levels.

(2)(A) If a firearm was discharged, increase by 5 levels; (B) if a dangerous weapon (including a firearm) was otherwise used, increase by 4 levels; (C) if a dangerous weapon (including a firearm) was brandished, displayed, or possessed, increase by 3 levels; or (D) if an express threat of death was made, increase by 2 levels.",

and by inserting the following additional subsection:

"(6) If the loss exceeded $10,000, increase the offense level as follows:

| | Increase in level |
|---|---|
| Loss (apply the greatest): | |
| (A) $10,000 or less | No increase. |
| (B) More than $10,000 | Add 1. |
| (C) More than $50,000 | Add 2. |
| (D) More than $250,000 | Add 3. |
| (E) More than $800,000 | Add 4. |
| (F) More than $1,500,000. | Add 5. |
| (G) More than $2,500,000. | Add 6. |
| (H) More than $5,000,000. | Add 7". |

The Commentary to § 2B3.1 captioned "Application Notes" is amended by deleting Note 2 and inserting in lieu thereof:

"2. When an object that appeared to be a dangerous weapon was brandished, displayed, or possessed, treat the object as a dangerous weapon for the purposes of subsection (b)(2)(C).".

The Commentary to § 2B3.1 captioned "Background" is amended in the first paragraph by deleting the third sentence.

*Reason for Amendment:* The purposes of this amendment are to increase the offense level for robbery to better reflect the seriousness of the offense and past practice, to provide an increased enhancement for the robbery of the property of a financial institution or post office, to provide an enhancement for an express threat of death, and to provide that an object that appeared to be a dangerous weapon is to be treated as a dangerous weapon for the purposes of subsection (b)(2)(C).

45. *Amendment:* Section 2B3.1(b)(3) is amended by inserting the following additional subdivisions:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), add 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), add 5 levels.".

The Commentary to § 2B3.1 captioned "Application Notes" is amended by deleting:

"4. If the degree of bodily injury falls between two injury categories, use of the intervening level (i.e., interpolation) is appropriate.",

and by renumbering Notes 5–8 as 4–7, respectively.

*Reason for Amendment:* The purpose of this amendment is to provide intermediate adjustment levels for the degree of bodily injury.

*§ 2B3.2 Extortion by Force or Threat of Injury or Serious Damage*

46. *Amendment:* Section 2B3.2 is amended in subsection (b)(2)(B) by deleting "a firearm or a dangerous weapon" and inserting in lieu thereof "a dangerous weapon (including a firearm)", and in subsection (b)(2)(C) by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "a dangerous weapon (including a firearm)".

*Reason for Amendment:* The purposes of this amendment are to clarify that a firearm is a type of dangerous weapon and to remove the inconsistency in language between specific offense characteristic subdivisions (b)(2)(B) and (b)(2)(C).

47. *Amendment:* Section 2B3.2(b)(3) is amended by inserting the following additional subdivisions:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), add 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), add 5 levels.".

The Commentary to § 2B3.2 captioned "Application Notes" is amended by deleting:

"4. If the degree of bodily injury falls between two injury categories, use of the intervening level (i.e., interpolation) is appropriate.",

and by renumbering Notes 5 and 6 as 4 and 5, respectively.

*Reason for Amendment:* The purpose of this amendment is to provide intermediate adjustment levels for the degree of bodily injury.

*§ 2B3.3 Blackmail and Similar Forms of Extortion*

48. *Amendment:* Section 2B3.3(b) is amended by deleting "Characteristics" and inserting in lieu thereof "Characteristic".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

*§ 2B5.1 Offenses Involving Counterfeit Obligations of the United States*

49. *Amendment:* Section 2B5.1 is amended in the title by inserting "Bearer" immediately before "Obligations".

The Commentary to § 2B5.1 captioned "Application Notes" is amended by renumbering Note 2 as Note 3, and by inserting the following as a new Note 2:

"2. 'Counterfeit,' as used in this section, means an instrument that purports to be genuine but is not, because it has been falsely made or manufactured in its entirety. Offenses involving genuine instruments that have been altered are covered under § 2B5.2.".

The Commentary to § 2B5.1 captioned "Application Notes" is amended in the renumbered Note 3 by deleting ", paste corners of notes on notes of a different denomination,".

*Reason for Amendment:* The purpose of this amendment is to clarify the coverage and operation of this guideline. The amendment revises the title of § 2B5.1 to make the coverage of the guideline clear from the title, and adopts the definition of "counterfeit" used in 18 U.S.C. § 513. "Altered" obligations (e.g., the corner of a note of one denomination pasted on a note of a different denomination) are covered under § 2B5.2.

*§ 2B5.2 Forgery; Offenses Involving Counterfeit Instruments Other Than Obligations of the United States*

50. *Amendment:* Section 2B5.2 is amended in the title by inserting "Altered or" immediately following "Involving" and by inserting "Counterfeit Bearer" immediately following "Other than".

*Reason for Amendment:* The purpose of this amendment is to clarify the coverage of this guideline.

*§ 2B6.1 Altering or Removing Motor Vehicle Identification Numbers, or Trafficking in Motor Vehicles or Parts With Altered or Obliterated Identification Numbers*

51. *Amendment:* Section 2B6.1(b) is amended by renumbering subsection (b)(2) as (b)(3) and inserting the following as a new subsection (b)(2):

"(2) If the defendant was in the business of receiving and selling stolen property, increase by 2 levels.".

*Reason for Amendment:* The purpose of this amendment is to resolve an inconsistency between this section and § 2B1.2 created by the lack of an enhancement in this section for a person in the business of selling stolen property. Currently, a defendant convicted under the statutes covered by this section, which are expressly designed to cover trafficking in motor vehicles or parts with altered or obliterated identification numbers, could receive a lower offense level than if convicted of transportation or receipt of stolen property. This amendment eliminates this inconsistency by adding a 2 level increase if the defendant was in the business of selling stolen property. Two levels rather than four levels is the applicable increase to conform to § 2B1.2 because the base offense level of § 2B6.1 already incorporates the adjustment for more than minimal planning.

52. *Amendment:* Section 2B6.1(b)(3) [formerly (b)(2)] is amended by deleting "organized criminal activity" and inserting in lieu thereof "an organized scheme to steal vehicles or vehicle parts, or to receive stolen vehicles or vehicle parts".

The Commentary to § 2B6.1 captioned "Application Note" is amended by deleting:

"1. See Commentary to § 2B1.1 (Larceny, Embezzlement, and other Forms of Theft) regarding the adjustment in subsection (b)(2) for organized criminal activity, such as car theft rings and 'chop shop' operations.",

and inserting in lieu thereof:

"1. Subsection (b)(3), referring to an 'organized scheme to steal vehicles or vehicle parts, or to receive stolen vehicles or vehicle parts,' provides an alternative minimum measure of loss in the case of an ongoing, sophisticated operation such as an auto theft ring or 'chop shop.' 'Vehicles' refers to all forms of vehicles, including aircraft and watercraft. See Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).".

*Reason for Amendment:* The purpose of this amendment is to clarify the coverage of a specific offense characteristic.

53. *Amendment:* Section 2B6.1(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics".

The Commentary to § 2B6.1 captioned "Statutory Provisions" and "Background" is amended by deleting "2320" wherever it appears and inserting in lieu thereof in each instance "2321".

*Reason for Amendment:* The purpose of this amendment is to correct clerical errors.

*§ 2C1.1 Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right*

*§ 2C1.2 Offering, Giving, Soliciting, or Receiving a Gratuity*

54. *Amendment:* Section 2C1.1(b)(1) is amended by deleting "action received" and inserting in lieu thereof "benefit received, or to be received,".

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 2 in the first sentence by deleting "action received" and inserting in lieu thereof "benefit received, or to be received,", and by deleting "action (i.e., benefit or favor)" and inserting in lieu thereof "benefit"; in the second sentence by deleting "action received in return" and inserting in lieu thereof "benefit received or to be received,", and by deleting "such action" and inserting in lieu thereof "such benefit"; and in the third sentence by deleting "action" and inserting in lieu thereof "benefit".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline and Commentary.

55. *Amendment:* Section 2C1.1(b) is amended by deleting "(1)" and "(2)" and inserting in lieu thereof "(A)" and "(B)" respectively; and by deleting "Apply the greater" and inserting in lieu thereof:

"(1) If the offense involved more than one bribe, increase by 2 levels.

(2) (If more than one applies, use the greater):".

The Commentary to § 2C1.1 captioned "Application Notes" is amended by deleting the text of Note 6 and inserting in lieu thereof:

"Related payments that, in essence, constitute a single bribe (e.g., a number of installment payments for a single action) are to be treated as a single bribe, even if charged in separate counts.".

Section 2C1.2(b) is amended by deleting "(1)" and "(2)" and inserting in lieu thereof "(A)" and "(B)" respectively; and by deleting "Apply the greater" and inserting in lieu thereof:

"(1) If the offense involved more than one gratuity, increase by 2 levels.
(2) (If more than one applies, use the greater):".

The Commentary to § 2C1.2 captioned "Application Notes" is amended by deleting the text of Note 4 and inserting in lieu thereof:

"Related payments that, in essence, constitute a single gratuity (e.g., separate payments for airfare and hotel for a single vacation trip) are to be treated as a single gratuity, even if charged in separate counts.".

Section 3D1.2(d) is amended in the listing of offense sections in the third paragraph by deleting "§ 2C1.1", and in the listing of offense sections in the second paragraph by inserting in order by section number "§§ 2C1.1, 2C1.2;".

*Reason for Amendment:* Under the current bribery guideline, there is no enhancement for repeated instances of bribery if the conduct involves the same course of conduct or common scheme or plan and the same victim (as frequently is the case where the government is the victim) because such cases are grouped under § 3D1.2(b). In contrast, the fraud and theft guidelines generally provide a 2-level increase in cases of repeated instances under the second prong of the "more than minimal planning" definition.

Unlike the theft and fraud guidelines, it is arguable that the value of any bribe that was part of the same course of conduct or a common scheme or plan as the offense of conviction, but not included in the count of conviction, is excluded from consideration. This is because § 1B1.3(a)(2), which authorizes consideration of conduct not expressly included in the offense of conviction but part of the same course of conduct or common scheme or plan, applies only to offenses grouped under § 3D1.2(d). Thus, if the defendant pleads to one count of a bribery offense involving one $10,000 bribe in satisfaction of a 15 count indictment involving an additional $80,000 in separate bribes that were part of the same course of conduct, the current bribery guideline, unlike the theft and fraud guidelines, would not take into account the additional $80,000, and there would be no increase for repeated instances.

The current guideline may also create various anomalies because the multiple count rule (which applies only where the offenses are not grouped under § 3D1.2(b)) increases the offense level differently than the monetary table. For example, an elected public official who takes three unrelated $200 bribes has an offense level of 21; the same defendant who took two unrelated $500,000 bribes would have an offense level of 20.

The amendment addresses the above issues. A specific offense characteristic is added to provide a 2-level increase where the offense involved more than one bribe or gratuity. In addition, such offenses will be grouped under § 3D1.2(d) which allows for aggregation of the amount of the bribes from the same course of conduct or common scheme or plan under § 1B1.3(a)(2) (as in theft and fraud offenses).

56. *Amendment:* The Commentary to § 2C1.1 captioned "Background" is amended in the eighth paragraph by deleting "extortions, conspiracies, and attempts" and inserting in lieu thereof "extortion, or attempted extortion,".

*Reason for Amendment:* This amendment corrects a technical error. This section expressly covers extortion and attempted extortion; conspiracy is covered through the operation of § 2X1.1.

*§ 2D1.1 Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses)*

57. *Amendment:* Section 2D1.1(a) is amended by deleting:

"(a) Base Offense Level:
(1) 43, for an offense that results in death or serious bodily injury with a prior conviction for a similar drug offense; or
(2) 38, for an offense that results in death or serious bodily injury and involved controlled substances (except Schedule III, IV, and V controlled substances and less than: (A) fifty kilograms of marihuana, (B) ten kilograms of hashish, and (C) one kilogram of hashish oil); or
(3) For any other offense, the base offense level is the level specified in the Drug Quantity Table below.",

and inserting in lieu thereof:

"(a) Base Offense Level (Apply the greatest):
(1) 43, if the defendant is convicted under 21 U.S.C. 841 (b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. 960 (b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or
(2) 38, if the defendant is convicted under 21 U.S.C. 841 (b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. 960 (b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from use of the substance; or
(3) the offense level specified in the Drug Quantity Table set forth in subsection (c) below.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 1 by deleting " 'Similar drug offense' as used in § 2D1.1(a)(1) means a prior conviction as described in 21 U.S.C. 841(b) or 962(b).", and inserting in lieu thereof " 'Mixture or substance' as used in this guideline has the same meaning as in 21 U.S.C. 841.".

*Reason for Amendment:* The purpose of this amendment is to provide that subsections (a) and (b) apply only in the case of a conviction under circumstances specified in the statutes cited. The amendment also clarifies that the term "mixture or substance" has the same meaning as it has in the statute.

58. *Amendment:* Section 2D1.1(b) is amended by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "a dangerous weapon (including a firearm)".

*Reason for Amendment:* The purpose of the amendment is to clarify the guideline.

59. *Amendment:* Section 2D1.1. is amended by deleting the "Drug Quantity Table" in its entirety, including the title and footnotes, and inserting in lieu thereof:

"(c) Drug Quantity Table

| Controlled substances and quantity* | Base offense level |
|---|---|
| (1) 300 KG or more of Heroin (or the equivalent amount of other Schedule I or II Opiates);<br>1500 KG or more of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);<br>15 KG or more of Cocaine Base;<br>300 KG or more of PCP, or 30 KG or more of Pure PCP;<br>300 KG or more of Methamphetamine, or 30 KG or more of Pure Methamphetamine;<br>3 KG or more of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);<br>120 KG or more of Fentanyl;<br>30 KG or more of a Fentanyl Analogue;<br>300,000 KG or more of Marihuana;<br>60,000 KG or more of Hashish;<br>6,000 KG or more of Hashish Oil. | Level 42. |
| (2) At least 100 KG but less than 300 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); | Level 40. |

| Controlled substances and quantity* | Base offense level |
|---|---|
| At least 500 KG but less than 1500 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);<br>At least 5 KG but less than 15 KG of Cocaine Base;<br>At least 100 KG but less than 300 KG of PCP, or at least 10 KG but less than 30 KG of Pure PCP;<br>At least 100 KG but less than 300 KG of Methamphetamine, or at least 10 KG but less than 30 KG of Pure Methamphetamine;<br>At least 1 KG but less than 3 KG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);<br>At least 40 KG but less than 120 KG of Fentanyl;<br>At least 10 KG but less than 30 KG of a Fentanyl Analogue;<br>At least 100,000 KG but less than 300,000 KG of Marihuana;<br>At least 20,000 KG but less than 60,000 KG of Hashish;<br>At least 2,000 KG but less than 6,000 KG of Hashish Oil. | |
| (3) At least 30 KG but less than 100 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);<br>At least 150 KG but less than 500 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);<br>At least 1.5 KG but less than 5 KG of Cocaine Base;<br>At least 30 KG but less than 100 KG of PCP, or at least 3 KG but less than 10 KG of Pure PCP;<br>At least 30 KG but less than 100 KG of Methamphetamine, or at least 3 KG but less than 10 KG of Pure Methamphetamine;<br>At least 300 KG but less than 1 KG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);<br>At least 12 KG but less than 40 KG of Fentanyl;<br>At least 3 KG but less than 10 KG of a Fentanyl Analogue;<br>At least 30,000 KG but less than 100,000 KG of Marihuana;<br>At least 6,000 KG but less than 20,000 KG of Hashish;<br>At least 600 KG but less than 2,000 KG of Hashish Oil. | Level 38. |
| (4) At least 10 KG but less than 30 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);<br>At least 50 KG but less than 150 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);<br>At least 500 G but less than 1.5 KG of Cocaine Base;<br>At least 10 KG but less than 30 KG of PCP, or at least 1 KG but less than 3 KG of Pure PCP;<br>At least 10 KG but less than 30 KG of Methamphetamine, or at least 1 KG but less than 3 KG of Pure Methamphetamine;<br>At least 100 G but less than 300 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);<br>At least 4 KG but less than 12 KG of a Fentanyl;<br>At least 1 KG but less than 3 KG of Fentanyl Analogue;<br>At least 10,000 KG but less than 30,000 KG of Marihuana;<br>At least 2,000 KG but less than 6,000 KG of Hashish;<br>At least 200 KG but less than 600 KG of Hashish Oil. | Level 36. |
| (5) At least 3 KG but less than 10 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates)<br>At least 15 KG but less than 50 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);<br>At least 150 G but less than 500 G of Cocaine Base;<br>At least 3 KG but less than 10 KG of PCP, or at least 300 G but less than 1 KG of Pure PCP;<br>At least 3 KG but less than 10 KG of Methamphetamine, or at least 300 G but less than 1 KG of Pure Methamphetamine;<br>At least 30 G but less than 100 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);<br>At least 1.2 KG but less than 4 KG of Fentanyl;<br>At least 300 G but less than 1 KG of Fentanyl Analogue;<br>At least 3,000 KG but less than 10,000 KG of Marihuana<br>At least 600 KG but less than 2,000 KG of Hashish;<br>At least 60 KG but less than 200 KG of Hashish Oil. | Level 34. |
| (6) At least 1 KG but less than 3 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);<br>At least 5 KG but less than 15 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);<br>At least 50 G but less than 150 G of Cocaine Base;<br>At least 1 KG but less than 3 KG of PCP, or at least 100 G but less than 300 G of Pure PCP;<br>At least 1 KG but less than 3 KG of Methamphetamine, or at least 100 G but less than 300 G of Pure Methamphetamine;<br>At least 10 G but less than 30 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);<br>At least 400 G but less than 1.2 KG of Fentanyl;<br>At least 100 G but less than 300 G of a Fentanyl Analogue;<br>At least 1,000 KG but less than 3,000 KG of Marihuana;<br>At least 200 KG but less than 600 KG of Hashish;<br>At least 20 KG but less than 60 KG of Hashish Oil. | Level 32. |
| (7) At least 700 G but less than 1 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);<br>At least 3.5 KG but less than 5 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);<br>At least 35 G but less than 50 G of Cocaine Base;<br>At least 700 G but less than 1 KG of PCP, or at least 70 G but less than 100 G of Pure PCP;<br>At least 700 G but less than 1 KG of Methamphetamine, or at least 70 G but less than 100 G of Pure Methamphetamine;<br>At least 7 G but less than 10 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);<br>At least 280 G but less than 400 G of Fentanyl;<br>At least 70 G but less than 100 G of a Fentanyl Analogue;<br>At least 700 KG but less than 1,000 KG of Marihuana;<br>At least 140 KG but less than 200 KG of Hashish;<br>At least 14 KG but less than 20 KG of Hashish Oil. | Level 30. |
| (8) At least 400 G but less than 700 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);<br>At least 2 KG but less than 3.5 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);<br>At least 20 G but less than 35 G of Cocaine Base;<br>At least 400 G but less than 700 G of PCP, or at least 40 G but less than 70 G of Pure PCP;<br>At least 400 G but less than 700 G of Methamphetamine, or at least 40 G but less than 70 G of Pure Methamphetamine;<br>At least 4 G but less than 7 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);<br>At least 160 G but less than 280 G of Fentanyl;<br>At least 40 G but less than 70 G of a Fentanyl Analogue;<br>At least 400 KG but less than 700 KG of Marihuana;<br>At least 80 KG but less than 140 KG of Hashish;<br>At least 8 KG but less than 14 KG of Hashish Oil. | Level 28. |
| (9) At least 100 G but less than 400 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);<br>At least 500 G but less than 2 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);<br>At least 5 G but less than 20 G of Cocaine Base;<br>At least 100 G but less than 400 G of PCP, or at least 10 G but less than 40 G of Pure PCP;<br>At least 100 G but less than 400 G of Methamphetamine, or at least 10 G but less than 40 G of Pure Methamphetamine; | Level 26. |

| Controlled substances and quantity* | Base offense level |
|---|---|
| At least 1 G but less than 4 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);<br>At least 40 G but less than 160 G of Fentanyl;<br>At least 10 G but less than 40 G of a Fentanyl Analogue;<br>At least 100 KG but less than 400 KG of Marihuana;<br>At least 20 KG but less than 80 KG of Hashish;<br>At least 2 KG but less than 8 KG of Hashish Oil. | |
| (10) At least 80 G but less than 100 G of Heroin (or the equvalent amount of other Schedule I or II Opiates);<br>At least 400 G but less than 500 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);<br>At least 4 G but less than 5 G of Cocaine Base;<br>At least 80 G but less than 100 G of PCP, or at least 8 G but less than 10 G of Pure PCP;<br>At least 80 G but less than 100 G of Methamphetamine, or at least 8 G but less than 10 G of Pure Methamphetamine;<br>At least 800 MG but less than 1 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);<br>At least 32 G but less than 40 G of Fentanyl;<br>At least 8 G but less than 10 G of Fentanyl Analogue;<br>At least 80 KG but less than 100 KG of Marihuana;<br>At least 16 KG but less than 20 KG of Hashish;<br>At least 1.6 KG but less than 2 KG of Hashish Oil. | Level 24. |
| (11) At least 60 G but less than 80 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);.<br>At least 300 G but less than 400 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);<br>At least 3 G but less than 4 G of Cocaine Base;<br>At least 60 G but less than 80 G of PCP, or at least 6 G but less than 8 G of Pure PCP;<br>At least 60 G but less than 80 G of Methamphetamine, or at least 6 G but less than 8 G of Pure Methamphetamine;<br>At least 600 MG but less than 800 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);<br>At least 24 G but less than 32 G of Fentanyl;<br>At least 6 G but less than 8 G of Fentanyl Analogue;<br>At least 60 KG but less than 80 KG of Marihuana;<br>At least 12 KG but less than 16 KG of Hashish;<br>At least 1.2 KG but less than 1.6 KG of Hashish Oil; | Level 22. |
| (12) At least 40 G but less than 60 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);.<br>At least 200 G but less than 300 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);<br>At least 2 G but less than 3 G of Cocaine Base;<br>At least 40 G but less than 60 G of PCP, or at least 4 G but less than 6 G of Pure PCP;<br>At least 40 G but less than 60 G of Methamphetamine, or at least 4 G but less than 6 G of Pure Methamphetamine;<br>At least 400 MG but less than 600 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);<br>At least 16 G but less than 24 G of Fentanyl;<br>At least 4 G but less than 6 G of a Fentanyl Analogue;<br>At least 40 KG but less than 60 KG of Marihuana;<br>At least 8 KG but less than 12 KG of Hashish;<br>At least 800 G but less than 1.2 KG of Hashish Oil;<br>20 KG or more of Schedule I or II Depressants or Schedule III substances. | |
| (13) At least 20 G but less than 40 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);<br>At least 100 G but less than 200 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);<br>At least 1 G but less than 2 G of Cocaine Base;<br>At least 20 G but less than 40 G of PCP, or at least 2 G but less than 4 G of Pure PCP;<br>At least 20 G but less than 40 G of Methamphetamine, or at least 2 G but less than 4 G of Pure Methamphetamine;<br>At least 200 MG but less than 400 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);<br>At least 8 G but less than 16 G of Fentanyl;<br>At least 2 G but less than 4 G of a Fentanyl Analogue;<br>At least 20 KG but less than 40 KG of Marihuana;<br>At least 5 KG but less than 8 KG of Hashish;<br>At least 500 G but less than 800 G of Hashish Oil;<br>At least 10 KG but less than 20 KG of Schedule I or I Depressants or Schedule II substances. | Level 18. |
| (14) At least 10 G but less than 20 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);<br>At least 50 G but less than 100 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);<br>At least 500 MG but less than 1 G of Cocaine Base; | Level 16. |
| At least 10 G but less than 20 G of PCP, or at least 1 G but less than 2 G of Pure PCP;<br>At least 10 G less than 20 G of Methamphetamine, or at least 1 G but less than 2 G of Pure Methamphetamine;<br>At least 100 MG but less than 200 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);<br>At least 4 G but less than 8 G of Fentanyl;<br>At least 1 G but less than 2 G of a Fentanyl Analogue;<br>At least 10 KG but less than 20 KG of Marihuana;<br>At least 2 KG but less than 5 KG of Hashish;<br>At least 200 G but less than 500 G of Hashish Oil;<br>At least 5 KG but less than 10 KG of Schedule I or I Depressants or Schedule III substances. | |
| (15) At least 5 G but less than 10 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);<br>At least 25 G but less than 50 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants);<br>At least 250 MG less than 500 MG of Cocaine Base;<br>At least 5 G but less than 10 G of PCP, or at least 500 MG but less than 1 G of Pure PCP;<br>At least 5 G but less than 10 G of Methamphetamine, or at least 500 MG but less than 1 G of Pure Methamphetamine;<br>At least 50 MG but less than 100 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens);<br>At least 2 G but less than 4 G of Fentanyl;<br>At least 500 MG but less than 1 G of a Fentanyl Analogue;<br>At least 5 KG but less than 10 KG of Marihuana;<br>At least 1 KG but less than 2 KG of Hanish;<br>At least 100 G but less than 200 G of Hashish Oil;<br>At least 2.5 KG but less than 5 KG of Schedule I or II Depressants or Schedule III substances. | Level 14. |
| (16) Less than 5 G Heroin (or the equivalent amount of other Schedule I or II Opiates);<br>Less than 25 G Cocaine (or the equivalent amount of other Schedule I or II Stimulants);<br>Less than 250 MG of Cocaine Base;<br>Less than 5 G of PCP, or less than 500 MG of Pure PCP;<br>Less than 5 G of Methamphetamine, or less than 500 MG of Pure Methamphetamine;<br>Less than 50 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); | Level 12. |

| Controlled substances and quantity* | Base offense level |
|---|---|
| Less than 2 G of Fentanyl;<br>Less than 500 MG of a Fentanyl Analogue;<br>At least 2.5 KG but less than 5 KG of Marihuana;<br>At least 500 G but less than 1 KG of Hashish;<br>At least 50 G but less than 100 G of Hashish Oil;<br>At least 1.25 KG but less than 2.5 KG of Schedule I or II Depressants or Schedule III substances;<br>20 KG or more of Schedule IV substances. | |
| (17) At least 1 KG but less than 2.5 KG of Marihuana;<br>At least 200 G but less than 500 G of Hashish;<br>At least 20 G but less than 50 G of Hashish Oil;<br>At least 500 G but less than 1.25 KG of Schedule I or II Depressants or Schedule III substances;<br>At least 8 KG but less than 20 KG of Schedule IV substances. | Level 10. |
| (18) At least 250 G but less than 1 KG of Marihuana;<br>At least 50 G but less than 200 G of Hashish;<br>At least 5 G but less than 20 G of Hashish Oil;<br>At least 125 G but less than 500 G of Schedule I or II Depressants or Schedule III substances;<br>At least 2 KG but less than 8 KG of Schedule IV substances;<br>20 KG or more of Schedule V substances. | Level 8. |
| (19) Less than 250 G of Marihuana;<br>Less than 50 G of Hashish;<br>Less than 5 G of Hashish Oil;<br>Less than 125 G of Schedule I or II Depressants or Schedule III substances;<br>Less than 2 KG of Schedule IV substances;<br>Less than 20 KG of Schedule V substances. | Level 6. |

*Unless otherwise specified, the weight of a controlled substance set forth in the table refers to the entire weight of any mixture or substance containing a detectable amount of the controlled substance. If a mixture or substance contains more than one controlled substance, the weight of the entire mixture or substance is assigned to the controlled substance that results in the greater offense level. In the case of a mixture or substance containing PCP or methamphetamine, use the offense level determined by the entire weight of the mixture or substance or the offense level determined by the weight of the pure PCP or methamphetamine, whichever is greater.

In the case of an offense involving marihuana plants, if the offense involved (A) 50 or more marihuana plants, treat each plant as equivalent to 1 KG of marihuana; (B) fewer than 50 marihuana plants, treat each plant as equivalent to 100 G of marihuana. Provided, however, that if the actual weight of the marihuana is greater, use the actual weight of the marihuana.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 9 by inserting immediately before the period at the end of the first sentence:

", except in the case of PCP or methamphetamine for which the guideline itself provides for the consideration of purity (see the footnote to the Drug Quantity Table)",

and by deleting:

"Congress provided an exception to purity considerations in the case of phencyclidine (PCP). 21 U.S.C. 841(b)(1)(A). The legislation designates amounts of pure PCP and mixtures in establishing mandatory sentences. The first row of the table illustrates this distinction as one kilogram of PCP or 100 grams of pure PCP. Allowance for higher sentences based on purity is not appropriate for PCP.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 by inserting "methamphetamine, fentanyl," immediately following "i.e., heroin, cocaine, PCP," and by deleting:

"one gram of a substance containing methamphetamine, a Schedule I stimulant, is to be treated as the equivalent of two grams of a substance containing cocaine in applying the Drug Quantity Table.",

and inserting in lieu thereof:

"one gram of a substance containing oxymorphone, a Schedule I opiate, is to be treated as the equivalent of five grams of a substance containing heroin in applying the Drug Quantity Table.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10, in the subdivision of the "Drug Equivalency Tables" captioned "Cocaine and Other Schedule I & II Stimulants" by deleting "2.0 gm. of cocaine/0.4 gm of heroin" immediately following "1 gm of Methamphetamine =" and inserting in lieu thereof "5.0 gm of cocaine/1.0 gm of heroin", and by deleting:

"1 gm of Phenylacetone/$P_2P$ (amphetamine precursor)=0.375 gm of cocaine/0.075 gm of heroin

1 gm of Phenylacebone/$P_2P$ (methamphetamine precursor)=0.833 gm of cocaine/0.167 gm of heroin",

and inserting in lieu thereof:

"1 gm Phenylacetone/$P_2P$ (when possessed for the purpose of manufacturing methamphetamine)=2.08 gm of cocaine/0.418 gm of heroin

1 gm Phenylacetone/$P_2P$ (in any other case)=0.375 gm of cocaine/0.075 gm of heroin".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10, in the subdivision of the "Drug Equivalency Tables" captioned "Schedule I Marihuana" by deleting:

"1 Marihuana/Cannabis Plant=0.1 gm of heroin/100 gm of marihuana".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" by deleting "Other Schedule I or II Substances" and inserting in lieu thereof "Schedule I or II Depressants".

The Commentary to 2D1.1 captioned "Background" is amended in the third paragraph by deleting "with two asterisks represent mandatory minimum sentences established by the Anti-Drug Abuse Act of 1986. These levels reflect sentences" and inserting in lieu thereof "at levels 26 and 32 establish guideline ranges", and by deleting "requirement" and inserting in lieu thereof "minimum".

*Reason for Amendment:* The purposes of this amendment are to expand the Drug Quantity Table to reflect offenses involving extremely large quantities of controlled substances, to eliminate minor gaps in the Drug Quantity Table, to reflect the statutory change with respect to methamphetamine (Section 6470 of the Anti-Drug Abuse Act of 1988) by inserting specific references to the quantity of this substance for each offense level set forth in the table, to reflect the statutory change with respect to fifty or more marihuana plants (Section 6479 of the Anti-Drug Abuse Act of 1988), to correct anomaly in the relationship of hashish oil to hashish in levels 6 and 8 of the Drug Quantity Table, to delete an unnecessary footnote, and to clarify the operation of the guideline.

60. *Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the section of the "Drug Equivalency Tables" captioned "Schedule I or II Opiates" on the line beginning "piperidinyl] Propanamide]=" by deleting "31.25 gm" and inserting in lieu thereof "2.5 gm"; on the line beginning "1 gm of Alpha-Methylfentanyl" by deleting "100 gm" and inserting in lieu thereof "10 gm"; and on the line beginning "1 gm of 3-Methylfentanyl" by deleting "125 gm" and inserting in lieu thereof "10 gm".

*Reason for Amendment:* The purpose of this amendment is to conform the equivalency for fentanyl and fentanyl analogues to that set forth in the Drug Quantity Table and statute.

61. *Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the section of "Dosage Equivalency Table" captioned "Hallucinogens" by deleting "STP (DOM) Dimethoxyamphetamine" and inserting in lieu thereof "2, 5-Dimethoxy-4-methylamphetamine (STP, DOM)".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the section of the "Dosage Equivalency Table" in the section

captioned "Stimulants" by deleting "Preludin 25 mg" and inserting in lieu thereof "Phenmetrazine (Preludin) 75 mg".

*Reason for Amendment:* The purposes of this amendment are to substitute generic names for two substances and to conform the dosage of Phenmetrazine to that currently being manufactured.

62. *Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" in the subdivision captioned "Schedule III Substances" by deleting:

"1 gm of Thiohexethal = 2 mg of heroin/2 gm of marihuana",

in the "Dosage Equivalency Table" in the subdivision captioned "Hallucinogens" by deleting:

"Anhalamine 300 mg",
"Anhalonide 300 mg",
"Anhalonine 300 mg",
"Lophophorine 300 mg",
"Pellotine 300 mg",

and in the "Dosage Equivalency Table" in the subdivision captioned "Depressants" by deleting:

"Brallobarbital 30 mg",
"Eldoral 100 mg",
"Eunarcon 100 mg",
"Hexethel 100 mg",
"Thiohexethal 60 mg".

*Reason for Amendment:* The purpose of this amendment is to delete substances that either are not controlled substances or are no longer manufactured.

63. *Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" in the subdivision captioned "Cocaine and Other Schedule I and II Stimulants" by inserting in the appropriate place in alphabetical order:

"1 gm of 4-Methylaminorex ('Euphoria')=0.5 gm of cocaine/0.1 gm of heroin",
"1 gm of Methylphenidate (Ritalin)=0.5gm of cocaine/0.1 gm of heroin",

in the subdivision captioned "LSD, PCP, and Other Schedule I and II Hallucinogens" by inserting in the appropriate place in alphabetical order:

"1 gm of 3, 4-Methylenedioxy-N-ethylamphetamine/MDEA=.03 gm of heroin or PCP",

in the subdivision captioned "Schedule III Substances" by inserting in the appropriate place (by alphabetical order):

"1 gm of Benzphetamine=4 mg of heroin/4 gm of marihuana",

and in the "Dosage Equivalency Table" in the subdivision captioned "Depressants" by inserting in the appropriate place in alphabetical order:

"Glutethimide (Doriden) 500 mg".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Dosage Equivalency Table" by inserting the following immediately after the subdivision captioned "Depressants":

"Marihuana—1 marihuana cigarette 0.5 gm".

*Reason for Amendment:* The purpose of this amendment is to make the Drug Equivalency Tables and Dosage Equivalency Table more comprehensive.

64. *Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in "Drug Equivalency Tables" in the subdivision captioned "Schedule III Substances" by deleting "2 mg of heroin/2 gm of marihuana" immediately following "1 gm of Glutethimide=" and inserting in lieu thereof "0.4 mg of heroin/0.4 gm of marihuana", and by deleting:

"1 gm of Paregoric=2 mg of heroin/2 gm of marihuana
1 gm of Hydrocodone Cough Syrups=2 mg of heroin/2 gm of marihuana",

and inserting in lieu thereof:

"1 ml of Paregoric=0.25 mg of heroin/0.25 gm of marihuana
1 ml of Hydrocodone Cough Syrup=1 mg of heroin/1 gm of marihuana".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Dosage Equivalency Table" in the subdivision captioned "Hallucinogens" by deleting ".1 mg" in the line beginning "LSD (Lysergic acid diethylamide)" and inserting in lieu thereof ".05 mg", by deleting "LSD tartrate .05 mg", by deleting "Peyote 12 mg", and by inserting in the appropriate place in alphabetical order:

"Peyote (dry) 12 gm",
"Peyote (wet) 120 gm",
"Psilocybe mushrooms (dry) 5 gm",
"Psilocybe mushrooms (wet) 50 gm".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Dosage Equivalency Table" in the subdivision captioned "Stimulants" by deleting "Ethylamphetamine HCL 12 mg" and "Ethylamphetamine $SO_4$ 12 mg", by deleting "Amphetamines" and inserting in lieu thereof "Amphetamine", by deleting "Methamphetamines" and inserting in lieu thereof "Methamphetamine", and by deleting "Methamphetamine combinations 5 mg".

*Reason for Amendment:* The purposes of this amendment are to provide more accurate approximations of the equivalencies and dosages for certain controlled substances, and to eliminate unnecessary references.

65. *Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the subdivision of the "Drug Equivalency Tables" captioned "LSD, PCP, and Other Schedule I and II Hallucinogens" by deleting:

"1 gm of Liquid phencyclidine=0.1 gm of heroin or PCP".

*Reason for Amendment:* The purpose of this amendment is to delete an incorrect equivalency.

66. *Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" by inserting immediately following the caption "Cocaine and Other Schedule I and II Stimulants" and immediately following the caption "LSD, PCP, and Other Hallucinogens" in each instance "(and their immediate precursors)".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

67. *Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 by deleting:

"The following dosage equivalents for certain common drugs are provided by the Drug Enforcement Administration to facilitate the application of § 2D1.1 of the guidelines in cases where the number of doses, but not the weight of the controlled substances are known. The dosage equivalents provided in these tables reflect the amount of the pure drug contained in an average dose.

**Dosage Equivalency Table",**

and inserting in lieu thereof:

"11. If the number of doses, pills, or capsules but not the weight of the controlled substance is known, multiply the number of doses, pills, or capsules by the typical weight per dose to estimate the total weight of the controlled substance (e.g., 100 doses of Bufotenine at 1 mg per dose=100 mg of Bufotenine). The Typical Weight Per Unit Table, prepared from information provided by the Drug Enforcement Administration, displays the typical weight per dose, pill, or capsule for common controlled substances.

**Typical Weight Per Unit (Dose, Pill, or Capsule) Table".**

The Commentary to § 2D1.1 captioned "Application Notes" is amended by renumbering the current Note 11 as Note 12.

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

68. *Amendment:* Section 2D1.1(b) is amended by inserting the following additional specific offense characteristic:

"(2) If the defendant is convicted of violating 21 U.S.C. 960(a) under circumstances in which (A) an aircraft other than a regularly scheduled commercial air carrier was used to import the controlled

substance, or (B) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance, increase by 2 levels. If the resulting offense level is less than level 26, increase to level 26.";

The Commentary to § 2D1.1 captioned "Application Notes" is amended by inserting the following additional Note:

"13. If subsection (b)(2)(B) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).";

The Commentary to § 2D1.1 captioned "Background" is amended by inserting the following additional paragraph between the third and fourth paragraphs:

"Specific Offense Characteristic (b)(2) is mandated by Section 6453 of the Anti-Drug Abuse Act of 1988.".

*Reason for Amendment:* The purpose of this amendment is to implement the directive to the Commission in Section 6453 of the Anti-Drug Abuse Act of 1988.

*§ 2D1.2 Involving Juveniles in the Trafficking of Controlled Substances*

*§ 2D1.3 Distributing Controlled Substances to Individuals Younger than Twenty-One Years, to Pregnant Women, or Within 1000 Feet of a School or College*

69. *Amendment:* Sections 2D1.2 and 2D1.3 are amended by deleting the guidelines and accompanying Commentary in their entirety and inserting in lieu thereof:

*"§ 2D1.2 Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals*

(a) Base offense level (Apply the greatest):
(1) 2 plus the offense level from § 2D1.1; or
(2) 26, if the offense involved a person less than eighteen years of age; or
(3) 13, otherwise.

Commentary

*Statutory Provisions:* 18 U.S.C. 845, 845a, 845b.

*Background:* This section implements the direction to the Commission in Section 6454 of the Anti-Drug Abuse Act of 1988.".

*Reason for Amendment:* This amendment implements the directive in Section 6454 of the Anti-Drug Abuse Act of 1988, and expands the coverage of the guideline to include the provision of Sections 6458 and 6459 of that Act. The amendment also covers the provisions of 21 U.S.C. 845, 845a, and 845b not included in the statutory direction to the Commission.

*§ 2D1.4 Attempts and Conspiracies*

70. *Amendment:* The Commentary to § 2D1.4 captioned "Application Notes" is amended in Note 1 by deleting:

"Where the defendant was not reasonably capable of producing the negotiated amount, the court may depart and impose a sentence lower than the sentence that would otherwise result",

and inserting in lieu thereof:

"However, where the court finds that the defendant did not intend to produce and was not reasonably capable of producing the negotiated amount, the court shall exclude from the guideline calculation the amount that it finds the defendant did not intend to produce and was not reasonably capable of producing.".

*Reason for Amendment:* Application Note 1 currently provides that the "weight under negotiation in an uncompleted distribution shall be used to calculate the applicable amount." The instruction then provides "Where the defendant was not reasonably capable of producing the negotiated amount the court may depart and impose a sentence lower than the sentence that would otherwise result." This provision may result in inflated offense levels in uncompleted offenses where a defendant is merely "puffing," even though the court is then authorized to address the situation by a downward departure. This amendment provides a more direct procedure for calculating the offense level where the court finds that the defendant did not intend to produce and was not reasonably capable of producing the negotiated amount.

71. *Amendment:* The Commentary to § 2D1.4 captioned "Application Notes" is amended in Note 1 by deleting "the sentence should be imposed only on the basis of the defendant's conduct or the conduct of co-conspirators in furtherance of the conspiracy that was known to the defendant or was reasonably foreseeable" and inserting in lieu thereof "see Application Note 1 to § 1B1.3 (Relevant Conduct).".

*Reason for Amendment:* The purpose of this amendment is to conform this Commentary to the revision of § 1B1.3.

72. *Amendment:* Section 2D1.4(a) is amended by deleting "participating in an incomplete" and inserting in lieu thereof "a".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

*§ 2D1.5 Continuing Criminal Enterprise*

73. *Amendment:* Section 2D1.5 is amended by deleting: "(a) Base *Offense Level:* 36" and inserting in lieu thereof:

"(a) Base Offense Level (Apply the greater):
(1) 4 plus the offense level from § 2D1.1 applicable to the underlying offense; or
(2) 38.".

The Commentary to § 2D1.5 captioned "Background" is amended in the first paragraph by deleting "base offense level of 36" and inserting in lieu thereof "minimum base offense level of 38", and in the second paragraph by deleting "for second convictions" and inserting in lieu thereof "for the first conviction, a 30-year minimum mandatory penalty for a second conviction,".

*Reason for Amendment:* The purpose of this amendment is to reflect the increased mandatory minimum penalty for this offense pursuant to Section 6481 of the Anti-Drug Abuse Act of 1988.

*"§ 2D1.10 Endangering Human Life While Illegally Manufacturing a Controlled Substance*

74. *Amendment:* Chapter Two, Part D is amended by inserting as an additional guideline the following:

§ 2D1.10. Endangering Human Life While Illegally Manufacturing a Controlled Substance

(a) Base Offense Level (Apply the greater):
(1) 3 plus the offense level from the Drug Quantity Table in § 2D1.1; or
(2) 20.

Commentary

*Statutory Provision:* 21 U.S.C. 858.".

*Reason for Amendment:* The purpose of this amendment is to create a guideline covering the new offense in Section 6301 of the Anti-Drug Abuse Act of 1988.

*§ 2D2.3 Operating or Directing the Operation of a Common Carrier Under the Influence of Alcohol or Drugs*

75. *Amendment:* Section 2D2.3 is amended by deleting : "(a) Base Offense Level: 8" and inserting in lieu thereof the following:

"(a) Base Offense Level (Apply the greatest):
(1) 26, if death resulted; or
(2) 21, if serious bodily injury resulted; or
(3) 13, otherwise.
(b) Special Instruction:
(1) If the defendant is convicted of a single count involving the death or serious bodily injury of more than one person, apply Chapter Three, Part D (Multiple Counts) as if the defendant had been convicted of a separate count for each such victim.".

The Commentary to § 2D2.3 is amended by adding at the end:

"*Background:* This guideline implements the directions to the Commission in Section 6842 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690). Offenses that come within this guideline may vary widely with regard to harm and risk of harm. The offense levels assume that the offense involved the operation of a common carrier carrying a number of passengers, e.g., a bus. If no or only a few passengers were placed at risk, a downward departure may be warranted. If the offense resulted in the death or serious

bodily injury of a large number of persons, such that the resulting offense level under subsection (b) would not adequately reflect the seriousness of the offense, an upward departure may be warranted.".

*Reason for Amendment:* The purpose of this amendment is to implement the directive to the Commission in Section 6482 of the Anti-Drug Abuse Act of 1988. In addition, the base offense level under subsection (a)(3) is increased to reflect the seriousness of the offense.

*§ 2E1.1 Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations*

76. *Amendment:* The Commentary to § 2E1.1 captioned "Application Notes" is amended by inserting the following as an additional Note:

"4. Certain conduct may be charged in the count of conviction as part of a 'pattern of racketeering activity' even though the defendant has previously been sentenced for that conduct. Where such previously imposed sentence resulted from a conviction prior to the last overt act of the instant offense, treat as a prior sentence under § 4A1.2(a)(1) and not as part of the instant offense. This treatment is designed to produce a result consistent with the distinction between the instant offense and criminal history found throughout the guidelines. If this treatment produces an anomalous result in a particular case, a guideline departure may be warranted.".

*Reason for Amendment:* This amendment adds an application note to clarify the treatment of certain conduct for which the defendant previously has been sentenced as either part of the instant offense or prior criminal record.

*§ 2E1.3 Violent Crimes in Aid of Racketeering Activity*

77. *Amendment:* The Commentary to § 2E1.3 captioned "Statutory Provision" is amended by deleting "1952B" and inserting in lieu thereof "1959 (formerly 18 U.S.C. 1952B)".

*Reason for Amendment:* The purpose of this amendment is to reflect the redesignation of this statute.

*§ 2E1.4 Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire*

78. *Amendment:* The Commentary to § 2E1.4 captioned "Statutory Provision" is amended by deleting "1952A" and inserting in lieu thereof "1958 (formerly 18 U.S.C. 1952A)".

*Reason for Amendment:* The purpose of this amendment is to reflect the redesignation of this statute.

*§ 2E1.5 Hobbs Act Extortion or Robbery*

79. *Amendment:* Section 2E1.5 is amended by deleting "the guideline provision for extortion or robbery" and inserting in lieu thereof "§ 2B3.1 (Robbery), § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage), § 2B3.3 (Blackmail and Similar Forms of Extortion), or § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right)".

The Commentary to § 2E1.5 captioned "Application Notes" is amended by deleting the entire text thereof, including the caption "Application Note:".

*Reason for Amendment:* The purpose of this amendment is to move material from the Commentary to the guideline where it more appropriately belongs.

*§ 2E2.1 Making, Financing, or Collecting an Extortionate Extension of Credit*

80. *Amendment:* Section 2E2.1 is amended in subsection (b)(1)(B) by deleting "a firearm or a dangerous weapon" and inserting in lieu thereof "a dangerous weapon (including a firearm)", and in subsection (b)(1)(C) by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "a dangerous weapon (including a firearm)".

*Reason for Amendment:* The purposes of this amendment are to clarify that a firearm is a type of dangerous weapon and to remove the inconsistency in language between specific offense characteristic subdivisions (b)(1)(B) and (b)(1)(C).

81. *Amendment:* Section 2E2.1(b)(2) is amended by inserting the following additional subdivisions:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), add 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), add 5 levels.".

*Reason for Amendment:* The purpose of this amendment is to provide intermediate adjustment levels for the degree of bodily injury.

82. *Amendment:* Section 2E2.1(b)(3)(A) is amended by inserting "or" immediately following "4 levels;".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

*§ 2E5.1 Bribery or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan*

83. *Amendment:* Section 2E5.1 is amended in the title by deleting "Bribery or Gratuity" and inserting in lieu thereof "Offering, Accepting, or Soliciting a Bribe or Gratuity".

*Reason for Amendment:* The purpose of amending the title of this section is to ensure that attempts and solicitations are expressly covered by this guideline.

*§ 2E5.2 Theft or Embezzlement from Employee Pension and Welfare Benefit Plans*

84. *Amendment:* Section 2E5.2 is amended by deleting:

"(a) Base Offense Level: 4

(b) Specific Offense Characteristics

(1) If the offense involved more than minimal planning, increase by 2 levels.

(2) If the defendant had a fiduciary obligation under the Employee Retirement Income Security Act, increase by 2 levels.

(3) Increase by corresponding number of levels from the table in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) according to the loss.",

and inserting in lieu thereof:

"Apply § 2B1.1.".

The Commentary to § 2E5.2 captioned "Application Notes" is amended by deleting:

"1. 'More than minimal planning' is defined in the Commentary to § 1B1.1 (Application Instructions). Valuation of loss is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft)." and

" 3. If the adjustment for a fiduciary obligation at § 2E5.2(b)(2) is applied, do not apply the adjustment at § 3B1.3 (Abuse of a Position of Trust or Use of a Special Skill).",

and inserting in lieu of Note 1 the following:

"1. In the case of a defendant who had a fiduciary obligation under the Employee Retirement Income Security Act, an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) would apply.".

The Commentary to § 2E5.2 captioned "Background" is amended by deleting:

"The base offense level corresponds to the base offense level for other forms of theft. Specific offense characteristics address whether a defendant has a fiduciary relationship to the benefit plan, the sophistication of the offense, and the scale of the offense.".

*Reason for Amendment:* The purpose of this amendment is to simplify application of the guidelines.

*§ 2E5.3 (False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act)*

85. Amendment: § 2E5.3(a)(2) is amended by deleting "false records were used for criminal conversion of funds or a scheme" and inserting in lieu thereof "the offense was committed to facilitate or conceal a theft or embezzlement, or an offense".

The Commentary to § 2E5.3 captioned "Application Note" is amended by deleting:

"Application Note:
1. 'Criminal conversion' means embezzlement.".

*Reason for Amendment:* The purpose of this amendment is to ensure that subsection (a)(2) covers any conduct engaged in for the purpose of facilitating or concealing a theft or embezzlement, or an offense involving a bribe or gratuity.

*§ 2E5.4 (Embezzlement of Theft from Labor Unions in the Private Sector)*

86. *Amendment:* Section 2E5.4 is amended by deleting:

"(a) Base Offense Level: 4
(b) Specific Offense Characteristics
(1) If the offense involved more than minimal planning, increase by 2 levels.
(2) If the defendant was a union officer or occupied a position of trust in the union, as set forth in 29 U.S.C. 501(a), increase by 2 levels.
(3) Increase by the number of levels from the table in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) corresponding to the loss.",

and inserting in lieu thereof:

"Apply § 2B1.1.".

The Commentary to § 2E5.4 captioned "Application Notes" is amended by deleting:

"1. 'More than minimal planning' is defined in the Commentary to § 1B1.1 (Applicable Instructions). Valuation of loss is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).
2. If the adjustment for being a union officer or occupying a position of trust in a union at § 2E5.4(b)(2) is applied, do not apply the adjustment at § 3B1.3 (Abuse of a Position of Trust or Use of a Special Skill).",

and inserting in lieu thereof:

"1. In the case of a defendant who was a union officer or occupied a position of trust in the union, as set forth in 29 U.S.C. 501(a), an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) would apply.",

and by deleting in the caption "Notes" and inserting in lieu thereof "Note".

The Commentary to § 2E5.4 captioned "Background" is amended by deleting:

"The seriousness of this offense is determined by the amount of money taken, the sophistication of the offense, and the nature of the defendant's position in the union.".

*Reason for Amendment:* The purpose of this amendment is to simplify application of the guidelines.

*§ 2E5.5 Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act*

87. *Amendment:* Section 2E5.5(a)(2) is amended by deleting "false records were used for criminal conversion of funds or a scheme" and inserting in lieu thereof "the offense was committed to facilitate or conceal a theft or embezzlement, or an offense".

*Reason for Amendment:* The purpose of this amendment is to ensure that subsection (a)(2) covers any conduct engaged in for the purpose of facilitating or concealing a theft or embezzlement, or an offense involving a bribe or gratuity.

*§ 2F1.1 Fraud and Deceit*

88. *Amendment:* Section 2F1.1(b)(1) is amended by deleting:

| | Increase in level |
|---|---|
| "Loss: | |
| (A) $2,000 or less | No increase. |
| (B) $2,001–$5,000 | Add 1. |
| (C) $5,001–$10,000 | Add 2. |
| (D) $10,001–$20,000 | Add 3. |
| (E) $20,001–$50,000 | Add 4. |
| (F) $50,001–$100,000 | Add 5. |
| (G) $100,001 $200,000 | Add 6. |
| (H) $200,001–$500,000 | Add 7. |
| (I) $500,001–$1,000,000 | Add 8. |
| (J) $1,000,001–$2,000,000 | Add 9. |
| (K) $2,000,001–$5,000,000 | Add 10. |
| (L) over $5,000,000 | Add 11.", |

and inserting in lieu thereof:

| | Increase in level |
|---|---|
| "Loss (apply the greatest): | |
| (A) $2,000 or less | No increase. |
| (B) More than $2,000 | Add 1. |
| (C) More than $5,000 | Add 2. |
| (D) More than $10,000 | Add 3. |
| (E) More than $20,000 | Add 4. |
| (F) More than $40,000 | Add 5. |
| (G) More than $70,000 | Add 6. |
| (H) More than $120,000 | Add 7. |
| (I) More than $200,000 | Add 8. |
| (J) More than $350,000 | Add 9. |
| (K) More than $500,000 | Add 10. |
| (L) More than $800,000 | Add 11. |
| (M) More than $1,500,000 | Add 12. |
| (N) More than $2,500,000 | Add 13. |
| (O) More than $5,000,000 | Add 14. |
| (P) More than $10,000,000 | Add 15. |
| (Q) More than $20,000,000 | Add 16. |
| (R) More than $40,000,000 | Add 17. |
| (S) More than $80,000,000 | Add 18.". |

*Reason for Amendment:* The purposes of this amendment are to conform the theft and fraud loss tables to the tax evasion table in order to remove an unintended inconsistency between these tables in cases where the amount is greater than $40,000, to increase the offense levels for offenses with larger losses to provide additional deterrence and better reflect the seriousness of the conduct, and to eliminate minor gaps in the loss table.

89. *Amendment:* The Commentary to § 2F1.1 captioned "Application Notes" is amended beginning in Note 14 by deleting:

"In such instances, although § 2F1.1 applies, a departure may be warranted.
15. In certain other cases, the mail or wire fraud statutes, or other relatively broad statutes, are used primarily as jurisdictional bases for the prosecution of other offenses. For example, a state law arson where a fraudulent insurance claim was mailed might be prosecuted as mail fraud. In such cases the most analogous guideline (in the above case, § 2K1.4) is to be applied.",

and by inserting at the end of Note 14:

"In certain other cases, the mail or wire fraud statutes, or other relatively broad statutes, are used primarily as jurisdictional bases for the prosecution of other offenses. For example, a state arson offense where a fraudulent insurance claim was mailed might be prosecuted as mail fraud. Where the indictment or information setting forth the count of conviction (or a stipulation as described in § 1B1.2(a)) establishes an offense more aptly covered by another guideline, apply that guideline rather than § 2F1.1. Otherwise, in such cases, § 2F1.1 is to be applied, but a departure from the guidelines may be considered.".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in the second sentence of Note 14 by deleting "in which" and inserting in lieu thereof "for which".

*Reason for Amendment:* The purposes of this amendment are to ensure that this guideline is interpreted in a manner consistent with § 1B1.2 and to correct a clerical error.

90. *Amendment:* Section 2F1.1(b)(2) is amended by deleting "; (B)" and inserting in lieu thereof ", or (B)", and by deleting "; (C) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious or political organization, or a government agency; or (D) violation of any judicial or administrative order, injunction, decree or process; increase by 2 levels, but if the result is less than level 10, increase to level 10" and inserting in lieu thereof ", increase by 2 levels".

Section 2F1.1(b)(3) is renumbered as (b)(5), and the following are inserted as new subsections:

"(3) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious or political organization, or a government agency, or (B) violation of any judicial or administrative order, injunction, decree or process, increase by 2 levels. If the

resulting offense level is less than level 10, increase to level 10.

(4) If the offense involved the conscious or reckless risk of serious bodily injury, increase by 2 levels. If the resulting offense level is less than level 13, increase to level 13.".

The Commentary to § 2F1.1 captioned "Statutory Provisions" is amended by inserting "1031," immediately following "1029".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 4 by deleting "(b)(2)(C)" and inserting in lieu thereof "(b)(3)(A)", in Note 5 by deleting "(b)(2)(D)" and inserting in lieu thereof "(b)(3)(B)", and in Note 9(c) by deleting "or risked".

The Commentary to § 2F1.1 captioned "Background" is amended in the third paragraph by deleting "not only", by deleting ", but also specifies that the minimum offense level in such cases shall be 10", and by deleting the last sentence.

The Commentary to § 2F1.1 captioned "Application Notes" is amended by deleting Note 10 in its entirety, and by renumbering Notes 11–14 as 10–13 respectively.

*Reason for Amendment:* This amendment is derived from the instruction to the Commission in Section 2(b) of the Major Fraud Act of 1988. The Commission has concluded that a 2-level enhancement with a minimum offense level of 13 should apply to all fraud cases involving a conscious or reckless risk of serious bodily injury. In addition, the amendment divides former subsection (b)(2) into two separate specific offenses characteristics to better reflect their separate nature.

*§ 2G1.1 Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct*

91. *Amendment:* Section 2G1.1(b)(1) is amended by deleting "defendant used" and inserting in lieu thereof "offense involved the use of", and by deleting "drugs or otherwise" and inserting in lieu thereof "threats or drugs or in any manner".

The Commentary to § 2G1.1 captioned "Application Notes" is amended in Note 2 by deleting "by drugs or otherwise" immediately following "coercion".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline and Commentary.

92. *Amendment:* Section 2G1.1 is amended by inserting the following additional subsection:

"(c) Special Instruction

(1) If the offense involves the transportation of more than one person, Chapter Three, Part D (Multiple Counts) shall be applied as if the transportation of each person had been contained in a separate count of conviction.".

*Reason for Amendment:* The purpose of this amendment is to provide a special instruction for the application of the multiple count rule in cases involving the transportation of more than one person.

*§ 2G1.2 Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct*

93. *Amendment:* Section 2G1.2(b)(1) is amended by deleting "drugs or otherwise" and inserting in lieu thereof "threats or drugs or in any manner".

Section 2G2.1(b) (2) and (3) is amended by deleting "conduct" whenever it appears and inserting in lieu thereof in each instance "offense".

The Commentary to § 2G1.2 captioned "Application Notes" is amended in Note 2 by deleting "by drugs or otherwise" immediately following "coercion", and in the caption by deleting "Note" and inserting in lieu thereof "Notes".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline and Commentary.

94. *Amendment:* Section 2G1.2 is amended by inserting the following additional subsection:

"(c) Special Instruction

(1) If the offense involves the transportation of more than one person, Chapter Three, Part D (Multiple Counts) shall be applied as if the transportation of each person had been contained in a separate count of conviction.".

*Reason for Amendment:* The purpose of this amendment is to provide a special instruction for the application of the multiple count rule in cases involving the transportation of more than one person.

*§ 2G2.1 Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material*

95. *Amendment:* The Commentary to § 2G2.1 captioned "Application Note" is amended in Note 1 by deleting ", distinct offense, even if several are exploited simultaneously" and inserting in lieu thereof "victim. Consequently, multiple counts involving the exploitation of different minors are not to be grouped together under § 3D1.2 (Groups of Closely-Related Counts).".

*Reason for Amendment:* The purpose of this amendment is to clarify that multiple counts involving different minors are not grouped under § 3D1.2.

*§ 2G2.3 Selling or Buying of Children for Use in the Production of Pornography*

96. *Amendment:* Chapter Two, Part G, is amended by inserting as an additional guideline:

"§ 2G2.3 Selling or Buying of Children for Use in the Production of Pornography

(a) Base Offense Level: 38

**Commentary**

*Statutory Provision:* 18 U.S.C. 2251A

*Background:* The statutory minimum sentence for a defendant convicted under 18 U.S.C. 2251A is twenty years imprisonment.".

*Reason for Amendment:* The purpose of this amendment is to create a guideline covering the new offense in Section 7512 of the Anti-Drug Abuse Act of 1988.

*§ 2G3.1 Importing, Mailing, or Transporting Obscene Matter*

97. *Amendment:* The Commentary to § 2G3.1 captioned "Statutory Provisions" is amended by deleting "§§ 1461–1465" and inserting in lieu thereof "§§ 1460–1463, 1465–1466".

*Reason for Amendment:* The purpose of this amendment is conform the Statutory Provisions to the revision of § 2G3.2 and to make them more comprehensive.

*§ 2G3.2 Obscene or Indecent Telephone Communications*

98. *Amendment:* Section 2G3.2 and the Commentary thereto are amended by deleting the entire text thereof, including the title, as follows:

"§ 2G3.2 Obscene or Indecent Telephone Communications

(a) Base Offense Level: 6

**Commentary**

*Statutory Provision:* 47 U.S.C. 223.

*Background:* This offense is a misdemeanor for which the maximum term of imprisonment authorized by statute is six months.",

and inserting in lieu thereof:

*"§ 2G3.2 Obscene Telephone Communications for a Commercial Purpose; Broadcasting Obscene Material*

(a) Base Offense Level: 12

(b) Specific Offense Characteristics

(1) If a person who received the telephonic communication was less than eighteen years of age, or if a broadcast was made between six o'clock in the morning and eleven o'clock at night, increase by 4 levels.

(2) If 6 plus the offense level from the table at 2F1.1(b)(1) corresponding to the volume of commerce attributable to the defendant is greater than the offense level determined above, increase to that offense level.

**Commentary**

*Statutory Provisions:* 18 U.S.C. 1464, 1468; 47 U.S.C. 223(b)(1)(A).

*Background:* Subsection (b)(1) provides an enhancement where an obscene telephonic communication was received by a minor less than 18 years of age or where a broadcast was made during a time when such minors were likely to receive it. Subsection (b)(2) provides an enhancement for large-scale "dial-a-porn" or obscene broadcasting operations that results in an offense level comparable to the offense level for such operations under 2G3.1 (Importing, Mailing, or Transporting Obscene Matter). The extent to which the obscene material was distributed is approximated by the volume of commerce attributable to the defendant.".

*Reason for Amendment:* The purposes of this amendment are to delete a petty offense no longer covered by the guidelines, and to insert a guideline covering felony offenses, including two offenses created by Sections 7523 and 7524 of the Anti-Drug Abuse Act of 1988.

*§ 2H1.3 Use of Force or Threat of Force to Deny Benefits or Rights in Furtherance of Discrimination*

99. *Amendment:* The title to § 2H1.3 is amended by adding at the end "; Damage to Religious Real Property".

The Commentary to § 2H1.3 captioned "Statutory Provisions" is amended by deleting "18 U.S.C. 245" and inserting in lieu thereof "18 U.S.C. 245, 247".

*Reason for Amendment:* The purpose of this amendment is to include a recently enacted offense (18 U.S.C. 247) expressly in the title of this guideline.

*§ 2H1.4 Interference with Civil Rights Under Color of Law*

100. *Amendment:* Section 2H1.4(a)(2) is amended by deleting "2 plus" and inserting in lieu thereof "6 plus".

The Commentary to § 2H1.4 captioned "Application Notes" is amended in Note 1 by deleting "2 plus" and inserting in lieu thereof "6 plus", and by deleting "is defined" and inserting in lieu thereof "means 6 levels above the offense level for any underlying criminal conduct. See the discussion".

The Commentary to § 2H1.4 captioned "Background" is amended by deleting ", except where death results, in which case the maximum term of imprisonment authorized is life imprisonment" and inserting in lieu there of "if no bodily injury results, ten years if bodily injury results, and life imprisonment if death results", by deleting "Given this one-year statutory maximum, a" and inserting in lieu thereof "A", by inserting "one year" immediately following "near the", and by inserting "or bodily injury" immediately following "resulting in death".

The Commentary to § 2Hl.4 captioned "Background" is amended by inserting at the end of the first paragraph:

"The 6-level increase under subsection (a)(2) reflects the 2-level increase that is applied to other offenses covered in this Part plus a 4-level increase for the commission of the offense under actual or purported legal authority. This 4-level increase is inherent in the base offense level of 10 under subsection (a)(1).".

*Reason for Amendment:* This amendment corrects an anomaly between the offense level under this section and § 2H1.5 when the offense level is determined under subsection (a)(2). Section 2H1.4 is similar to § 2H1.5 in that it may or may not involve the use of force. Under § 2H1.4, however, the offense must involve the abuse of actual or purported legal authority. The base offense level of 10 used in 2H1.4(a)(1) has a built-in 4-level enhancement (which corresponds to the base offense level of 6 under § 2H1.5(a)(1) plus the 4-level increase for a public official). There is an anomaly, however, when the base offense level from (a)(2) is used. In such cases, § 2H1.4 results in an offense level that is 4 levels less than § 2H1.5 when the offense is committed by a public official. The Commentary to § 2H1.4 is also amended to reflect the increase in the maximum authorized sentence from one to ten years in cases involving bodily injury.

*§ 2H1.5 Other Deprivations of Rights or Benefits in Furtherance of Discrimination*

101. *Amendment:* The Commentary to § 2H1.5 captioned "Application Notes" is amended in Note 2 by deleting "§ 2H1.4(b)(1)" and inserting in lieu thereof "§ 2H1.5(b)(1)".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

*§ 2H2.1 Obstructing an Election or Registration*

102. *Amendment:* Section 2H2.1(a)(1) is amended by deleting "persons" and inserting in lieu thereof "person(s)".

The Commentary to § 2H2.1 captioned "Background" is amended by deleting "Specific offense characteristics" and inserting in lieu thereof "Alternative base offense levels".

*Reason for Amendment:* The purpose of this amendment is to correct two clerical errors. First, the use of the plural "persons" in current subsection (a) (1) could be read to mean this subsection does not apply if the force or threat was applied only to one person, a result that was not intended. Second, the reference to "Specific offense characteristics" in the current Background is inaccurate; it should read "Alternative base offense levels".

*§ 2H3.1 Interception of Communications or Eavesdropping*

103. *Amendment:* Section 2H3.1 is amended by deleting:

"(a) Base Offense Level (Apply the greater):
(1) 9; or
(2) If the purpose of the conduct was to facilitate another offense, apply the guideline applicable to an attempt to commit that offense.
(b) Specific Offense Characteristic
(1) If the purpose of the conduct was to obtain direct or indirect commercial advantage or economic gain not covered by § 2H3.1(a)(2) above, increase by 3 levels.".

and inserting in lieu thereof:

"(a) Base Offense Level: 9
(b) Specific Offense Characteristic
(1) If the purpose of the conduct was to obtain direct or indirect commercial advantage or economic gain, increase by 3 levels.
(c) Cross Reference
(1) If the purpose of the conduct was to facilitate another offense, apply the guideline applicable to an attempt to commit that offense, if the resulting offense level is greater than that determined above.".

*Reason for Amendment:* This amendment corrects an anomaly in § 2H3.1. Currently, specific offense characteristic (b)(1) applies only to base offense level (a)(1). Consequently, conduct facilitating an offense for economic gain of level 8 or 9 would result in a greater offense level (11 or 12) than conduct facilitating a more serious (level 10 or 11) offense.

*§ 2J1.1 Contempt*

104. *Amendment:* Section 2J1.1 is amended by deleting:

"If the defendant was adjudged guilty of contempt, the court shall impose a sentence based on stated reasons and the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2).".

and inserting in lieu thereof:

"Apply § 2X5.1 (Other Offenses).".

The Commentary to § 2J1.1 captioned "Application Note" is amended in Note 1 by deleting "See, however, § 2X5.1 (Other Offenses)." and inserting in lieu thereof "In certain cases, the offense conduct will be sufficiently analogous to § 2J1.2 (Obstruction of Justice) for that guideline to apply.".

*Reason for Amendment:* This section is designated as a guideline, but it is not a guideline contemplated by the Sentencing Reform Act. This amendment clarifies the Commission's original intent by referencing this section to § 2X5.1 (Other Offenses).

105. *Amendment:* The Commentary to § 2J1.1 captioned "Statutory Provisions" is amended by deleting "Provisions" and

inserting in lieu thereof "Provision", and by deleting "§" and ", 402".

*Reason for Amendment:* The purpose of this amendment is to delete a reference to a petty offense.

*§ 2J1.2 Obstruction of Justice*

106. *Amendment:* Section 2J1.2(b)(1) is amended by deleting "defendant obstructed or attempted to obstruct the administration of justice by" and inserting in lieu thereof "offense involved", and by deleting "or property," and inserting in lieu thereof ", or property damage, in order to obstruct the administration of justice".

Section 2J1.2(b)(2) is amended by deleting "defendant substantially interfered" and inserting in lieu thereof "offense resulted in substantial interference".

Section 2J1.2(c)(1) is amended by deleting "conduct was" and inserting in lieu thereof "offense involved", and by deleting "such" and inserting in lieu thereof "that".

The Commentary to § 2J1.2 captioned "Application Notes" is amended in Note 1 by deleting " 'Substantially interfered" and inserting in lieu thereof " 'Substantial interference", and by deleting "offense conduct resulting in".

*Reason for Amendment:* The purposes of this amendment are to clarify the guideline and to ensure that an attempted obstruction is not excluded from subsection (c) because of the non-parallel language between (b)(1) and (c)(1).

107. *Amendment:* The Commentary to § 2J1.2 captioned "Statutory Provisions" is amended by deleting "1503-" and inserting in lieu thereof "1503, 1505-".

*Reason for Amendment:* The purpose of this amendment is to delete a reference to a petty offense.

108. *Amendment:* The Commentary to § 2J1.2 captioned "Statutory Provisions" is amended by inserting ", 1516" immediately following "1513".

*Reason for Amendment:* The purpose of this amendment is to expand the coverage of an existing guideline to include a new offense (Obstruction of a Federal Audit) created by Section 7078 of the Anti-Drug Abuse Act of 1988.

*§ 2J1.3 Perjury*

109. *Amendment:* Section 2J1.3 is amended in the caption by inserting "or Subornation of Perjury" immediately following "Perjury".

Section 2J1.3(b)(1) is amended by deleting "defendant suborned perjury by" and inserting in lieu thereof "offense involved", and by deleting "or property" and inserting in lieu thereof ", or property damage, in order to suborn perjury".

Section 2J1.3(b)(2) is amended by deleting "defendant's", and by deleting "substantially interfered" and inserting in lieu thereof "resulted in substantial interference".

Section 2J1.3(c)(1) is amended by deleting "conduct was perjury" and inserting in lieu thereof "offense involved perjury or subornation of perjury", and by deleting "such" and inserting in lieu thereof "that".

The Commentary to § 2J1.3 captioned "Application Notes" is amended in Note 1 by deleting "'Substantially interfered" and inserting in lieu thereof "'Substantial interference", and by deleting "offense conduct resulting in".

*Reason for Amendment:* The purposes of this amendment are to clarify the guideline and to ensure that subornation of perjury is not excluded from subsection (c) due to a lack of parallel wording in the subsections.

*§ 2J1.4 Impersonation*

110. *Amendment:* Section 2J1.4(b)(1) is amended by deleting:

"If the defendant falsely represented himself as a federal officer, agent or employee to demand or obtain any money, paper, document, or other thing of value or to conduct an unlawful arrest or search, increase by 6 levels.",

and inserting in lieu thereof:

"If the impersonation was committed for the purpose of conducting an unlawful arrest, detention, or search, increase by 6 levels.".

Section 2J1.4 is amended by inserting the following additional subsection:

"(c) Cross Reference

(1) If the impersonation was to facilitate another offense, apply the guideline for an attempt to commit that offense, if the resulting offense level is greater than the offense level determined above.".

*Reason for Amendment:* The purpose of this amendment is to relate the offense levels more directly to the underlying offense where the impersonation is committed for the purpose of facilitating another offense.

*§ 2J1.5 Failure to Appear by Material Witness*

111. *Amendment:* Section 2J1.5(b)(1) is amended by deleting "substantially interfered" and inserting in lieu thereof "resulted in substantial interference".

The Commentary to § 2J1.5 captioned "Application Notes" is amended in Note 1 by deleting " 'Substantially interfered" and inserting in lieu thereof " 'Substantial interference", and by deleting "offense conduct resulting in".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

*§ 2J1.7 Commission of Offense While on Release*

112. *Amendment:* Section 2J1.7 is amended by deleting:

"§ 2J1.7. Commission of Offense While on Release

(a) Base Offense Level: 6

(b) Specific Offense Characteristics

(1) If the offense committed while on release is punishable by death or imprisonment for a term of fifteen years or more, increase by 6 levels.

(2) If the offense committed while on release is punishable by a term of imprisonment of five or more years, but less than fifteen years, increase by 4 levels.

(3) If the offense committed while on release is a felony punishable by a maximum term of less than five years, increase by 2 levels.

**Commentary**

*Statutory Provision:* 18 U.S.C. 3147.

*Application Notes:*

1. This guideline applies whenever a sentence pursuant to 18 U.S.C. 3147 is imposed.

2. By statute, a term of imprisonment imposed for a violation of 18 U.S.C. 3147 runs consecutively to any other term of imprisonment. Consequently, a sentence for such a violation is exempt from grouping under the multiple count rules. See § 3D1.2.

*Background:* Because defendants convicted under this section will generally have a prior criminal history, the guideline sentences provided are greater than they otherwise might appear.",

and inserting in lieu thereof:

*"§ 2J1.7. Commission of Offense While on Release*

If an enhancement under 18 U.S.C. 3147 applies, add 3 levels to the offense level for the offense committed while on release as if this section were a specific offense characteristic contained in the offense guideline for the offense committed while on release.

**Commentary**

*Statutory Provision:* 18 U.S.C. 3147.

*Application Notes:*

1. Because 18 U.S.C. 3147 is an enhancement provision, rather than an offense, this section provides a specific offense characteristic to increase the offense level for the offense committed while on release.

2. Under 18 U.S.C. 3147, a sentence of imprisonment must be imposed in addition to the sentence for the underlying offense, and the sentence of imprisonment imposed under 18 U.S.C. 3147 must run consecutively to any other sentence of imprisonment. Therefore, the court, in order to comply with the statute, should divide the sentence on the judgment form between the sentence attributable to the underlying offense and the sentence attributable to the enhancement. The court will have to ensure that the 'total punishment'

(i.e., the sentence for the offense committed while on release plus the sentence enhancement under 18 U.S.C. 3147) is in accord with the guideline range for the offense committed while on release, as adjusted by the enhancement in this section. For example, if the applicable adjusted guideline range is 30–37 months and the court determines 'total punishment' of 36 months is appropriate, a sentence of 30 months for the underlying offense plus 6 months under 18 U.S.C. 3147 would satisfy this requirement.

*Background:* An enhancement under 18 U.S.C. 3147 may be imposed only upon application of the government; it cannot be imposed on the court's own motion. In this respect, it is similar to a separate count of conviction and, for this reason, is placed in Chapter Two of the guidelines.

Legislative history indicates that the mandatory nature of the penalties required by 18 U.S.C. 3147 was to be eliminated upon the implementation of the sentencing guidelines. 'Section 213(h) (renumbered as section 200(g) in the Crime Control Act of 1984) amends the new provision in title I of this Act relating to consecutive enhanced penalties for committing an offense on release (new 18 U.S.C. 3147) by eliminating the mandatory nature of the penalties in favor of utilizing sentencing guidelines.' (Senate Report 98–225 at 186). Not all of the phraseology relating to the requirement of a mandatory sentence, however, was actually deleted from the statute. Consequently, it appears that the court is required to impose a consecutive sentence of imprisonment under this provision, but there is no requirement as to any minimum term. This guideline is drafted to enable the court to determine and implement a combined 'total punishment' consistent with the overall structure of the guidelines, while at the same time complying with the statutory requirement. Guideline provisions that prohibit the grouping of counts of conviction requiring consecutive sentences (e.g., the introductory paragraph of § 3D1.2; § 5G1.2(a)) do not apply to this section because 18 U.S.C. 3147 is an enhancement, not a count of conviction.".

*Reason for Amendment:* The purpose of this amendment is to reflect the fact that 18 U.S.C. 3147 is an enhancement provision, not a distinct offense. Created in 1984 as part of the Comprehensive Crime Control Act, the statute contained interim provisions (mandatory consecutive sentences that were subject to the parole and good time provisions of prior law) that were to be in effect until the sentencing guidelines took effect. The Senate Report to S. 1762 indicates that the mandatory nature of the interim provisions was to be eliminated when the sentencing guidelines took effect ("Section 213(h) (220(g) of the CCCA of 1984) amends the new provision in title I of this Act relating to consecutive enhanced penalties for committing an offense while on release (new 18 U.S.C. 3147)) by eliminating the mandatory nature of the penalties in favor of utilizing sentencing guidelines" (Senate Report 98–225 at 186). The statute, as amended, however, did not actually eliminate all language referring to mandatory penalties. A mandatory consecutive term of imprisonment is required but, unlike other mandatory provisions, there is no minimum required.

The amendment converts this section into an offense level adjustment for the offense committed while on release, a treatment that is considerably more consistent with the treatment of other offense/offender characteristics.

*§ 2J1.8 Bribery of a Witness*

113. *Amendment:* Section 2J1.8(b)(1) is amended by deleting "substantially interfered" and inserting in lieu thereof "resulted in substantial interference".

Section 2J1.8(c)(1) is amended by deleting "conduct was" and inserting in lieu thereof "offense involved", and by deleting "such" and inserting in lieu thereof "that".

The Commentary to § 2J1.8 captioned "Application Notes" is amended in Note 1 by deleting "Substantially interfered" and inserting in lieu thereof "Substantial interference", and by deleting "offense conduct resulting in".

The Commentary to § 2J1.8 captioned "Application Notes" is amended in Note 2 by deleting "This section applies only in the case of a conviction under the above referenced (or equivalent) statute." immediately before "For offenses".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

*§ 2J1.9 Payment to Witness*

114. *Amendment:* The Commentary to § 2J1.9 captioned "Application Notes" is amended in Note 2 by deleting "This section applies only in the case of a conviction under the above referenced (or equivalent) statute." immediately before "For offenses".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

115. *Amendment:* Section 2J1.9(b)(1) is amended by deleting "for refusing to testify" and inserting in lieu thereof "made or offered for refusing to testify or for the witness absenting himself to avoid testifying".

The Commentary to § 2J1.9 captioned "Application Notes" is amended by deleting:

"1. 'Refusing to testify' includes absenting oneself for the purpose of avoiding testifying.",

and by renumbering Notes 2 and 3 as 1 and 2 respectively.

*Reason for Amendment:* The purpose of this amendment is to move material from the Commentary to the guideline itself where it more properly belongs.

**Chapter Two, Part K, Offenses Involving Public Safety**

116. *Amendment:* Sections 2K1.4(c) and 2K1.5(c) are amended by deleting "higher" whenever it appears and inserting in lieu thereof "greater".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

*§ 2K1.3 Unlawfully Trafficking In, Receiving, or Transporting Explosives*

117. *Amendment:* Section 2K1.3(b) is amended by deleting "any of the following" and inserting in lieu thereof "more than one".

Section 2K1.3(b)(5) is amended by deleting "firearm offense" and inserting in lieu thereof "offense involving explosives".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

*§ 2K1.4 Arson: Property Damage By Use of Explosives*

118. *Amendment:* Section 2K1.4(b) is amended by deleting "any of the following" and inserting in lieu thereof "more than one".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

119. *Amendment:* Section 2K1.4 is amended by inserting the following as an additional subsection:

"(d) Note:

(1) The specific offense characteristic in subsection (b)(4) applies only in the case of an offense committed prior to November 18, 1988.".

The Commentary to § 2K1.4 captioned "Statutory Provisions" is amended by inserting "(only in the case of an offense committed prior to November 18, 1988)" immediately following "(h)".

The Commentary to § 2K1.4 captioned "Background", is amended by deleting "used fire or an explosive in the commission of a felony," and by inserting at the end of the paragraph the following new sentence: "As amended by Section 6474(b) of the Anti-Drug Abuse Act of 1988 (effective November 18, 1988), 18 U.S.C. 844(h) sets forth a mandatory sentencing enhancement of five years for the first offense and ten years for subsequent offenses if the defendant was convicted of using fire or an explosive to commit a felony or of carrying an explosive during the commission of a felony. See § 2K1.7.".

*Reason for Amendment:* The purpose of this amendment is to conform the

guideline to a statutory revision to 18 U.S.C. 844(h).

*§ 2K1.5 Possessing Dangerous Weapons or Materials While Boarding or Aboard an Aircraft*

120. *Amendment:* Section 2K1.5(b) is amended by deleting "any of the following" and inserting in lieu thereof "more than one".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

121. *Amendment:* Section 2K1.5(b)(1) is amended by deleting "(i.e., the defendant is convicted under 49 U.S.C. 1472(l)(2)", and by inserting "is convicted under 49 U.S.C. 1472(l)(2) (i.e., the defendant" immediately before "acted".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

*§ 2K1.7 Use of Fire or Explosive to Commit a Federal Felony*

122. *Amendment:* Chapter Two, Part K is amended by inserting as an additional guideline the following:

*"§ 2K1.7. Use of Fire or Explosive to Commit a Federal Felony*

If the defendant, whether or not convicted of another crime, was convicted under 18 U.S.C. 844(h), the term of imprisonment is that required by statute.

**Commentary**

*Statutory Provision:* 18 U.S.C. 844(h).

*Application Notes:*

1. The statute requires a term of imprisonment imposed under this section to run consecutively to any other term of imprisonment.

2. Imposition of a term of supervised release is governed by the provisions of § 5D1.1 (Imposition of a Term of Supervised Release).".

*Reason for Amendment:* The purpose of this amendment is to conform the guideline to a statutory revision of the meaning of 18 U.S.C. 844(h).

**Chapter Two Part K, Subpart 2**

123. *Amendment:* Section 2K2.1 and accompanying Commentary, except for Commentary captioned "Background", are deleted and the following inserted in lieu thereof:

*"§ 2K2.1. Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition*

(a) Base Offense Level (Apply the greatest):

(1) 16, if the defendant is convicted under 18 U.S.C. 922(o) or 26 U.S.C. 5861; or

(2) 12, if the defendant is convicted under 18 U.S.C. 922(g), (h), or (n); or if the defendant, at the time of the offense, had been convicted in any court of an offense punishable by imprisonment for a term exceeding one year; or

(3) 6, otherwise.

(b) Specific Offense Characteristics

(1) If the defendant obtained or possessed the firearm or ammunition solely for lawful sporting purposes or collection, decrease the offense level determined above to level 6.

(2) If the firearm was stolen or had an altered or obliterated serial number, increase by 2 levels.

(c) Cross References

(1) If the offense involved the distribution of a firearm or possession with intent to distribute, apply § 2K2.2 (Unlawful Trafficking and Other Prohibited Transactions Involving a Firearm) if the resulting offense level is greater than that determined above.

(2) If the defendant used or possessed the firearm in connection with commission or attempted commission of another offense, apply § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense, if the resulting offense level is greater than that determined above.

*Statutory Provisions:* 18 U.S.C. 922(a)(1), (a)(3), (a)(4), (a)(6), (e), (f), (g), (h), (i), (j), (k), (l), (n), and (o); 26 U.S.C. 5861(b), (c), (d), (h), (i), (j), and (k).

*Application Notes:*

1. The definition of 'firearm' used in this section is that set forth in 18 U.S.C. 921(a)(3) (if the defendant is convicted under 18 U.S.C. 922) and 26 U.S.C. 5845(a) (if the defendant is convicted under 26 U.S.C. 5861). These definitions are somewhat broader than that used in Application Note 1(e) of the Commentary to § 1B1.1 (Application Instructions). Under 18 U.S.C. 921(a)(3), the term 'firearm' means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Under 26 U.S.C. 5845(a), the term 'firearm' includes a shotgun, or a weapon made from a shotgun, with a barrel or barrels of less than 18 inches in length; a weapon made from a shotgun or rifle with an overall length of less than 26 inches; a rifle, or weapon from a rifle, with a barrel or barrels less than 16 inches in length; a machine gun; a muffler or silencer for a firearm; a destructive device; and certain other large bore weapons.

2. Under § 2K2.1(b)(1), intended lawful use, as determined by the surrounding circumstances, provides a decrease in offense level. Relevant circumstances include, among others, the number and type of firearms (sawed-off shotguns, for example, have few legitimate uses) and ammunition, the location and circumstances of possession, the nature of the defendant's criminal history (e.g., whether involving firearms), and the extent to which possession was restricted by local law.".

Sections 2K2.2 and 2K2.3, including titles and accompanying Commentary, are deleted in their entirety and the following substituted in lieu thereof:

*"§ 2K2.2. Unlawful Trafficking and Other Prohibited Transactions Involving Firearms*

(a) Base Offense Level:

(1) 16, if the defendant is convicted under 18 U.S.C. 922(o) or 26 U.S.C. 5861;

(2) 6, otherwise.

(b) Specific Offense Characteristics

(1) If the offense involved distribution of a firearm, or possession with intent to distribute, and the number of firearms unlawfully distributed, or to be distributed, exceeded two, increase as follows:

| Number of firearms | Increase in level |
|---|---|
| (A) 3–4 | Add 1. |
| (B) 5–7 | Add 2. |
| (C) 8–12 | Add 3. |
| (D) 13–24 | Add 4. |
| (E) 25–49 | Add 5. |
| (F) 50 or more | Add 6. |

(2) If any of the firearms was stolen or had an altered or obliterated serial number, increase by 2 levels.

(3) If more than one of the following applies, use the greater:

(A) If the defendant is convicted under 18 U.S.C. 922(d), increase by 6 levels; or

(B) If the defendant is convicted under 18 U.S.C. 922 (b)(1) or (b)(2), increase by 1 level.

(c) Cross Reference

(1) If the defendant, at the time of the offense, had been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, apply § 2K2.1 (Unlawful Possession, Receipt, or Transportation of a Firearm or Ammunition) if the resulting offense level is greater than that determined above.

**Commentary**

*Statutory Provisions:* 18 U.S.C. 922 (a)(1), (a)(2), (a)(5), (b), (c), (d), (e), (f), (i), (j), (k), (l), (m), (o); 26 U.S.C. 5861 (a), (e), (f), (g), (j), and (l).

*Application Note*

1. The definition of firearm used in this section is that set forth in 18 U.S.C. 921(a)(3) (if the defendant is convicted under 18 U.S.C. 922) and 26 U.S.C. 5845(a) (if the defendant is convicted under 26 U.S.C 5861). These definitions are somewhat broader than that used in Application Note 1(e) of the Commentary to § 1B1.1 (Application Instructions). Under 18 U.S.C. 921(a)(3), the term 'firearm' means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Under 26 U.S.C. 5845(a), the term 'firearm' includes a shotgun, or a weapon made from a shotgun, with a barrel or barrels of less than 18 inches in length; a weapon made from a shotgun or rifle with an overall length of less than 26 inches; a rifle, or weapon from a rifle, with a barrel or barrels less than 16 inches in length; a machine gun; a muffler or silencer for a firearm; a destructive device; and certain other large bore weapons.

2. If the number of weapons involved exceeded fifty, an upward departure may be warranted. An upward departure especially may be warranted in the case of large numbers of military type weapons (e.g., machine guns, automatic weapons, assault rifles).

Background: This guideline applies to a variety of offenses involving firearms, ranging from unlawful distribution of silencers, machine guns, sawed-off shotguns and destructive devices, to essentially technical violations.".

*"§ 2K2.3. Receiving, Transporting, Shipping or Transferring a Firearm or Ammunition With Intent to Commit Another Offense, or With Knowledge that It Will Be Used in Committing Another Offense*

(a) Base Offense Level (Apply the greatest):

(1) The offense level from § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to the offense that the defendant intended or knew was to be committed with the firearm; or

(2) The offense level from § 2K2.1 (Unlawful Receipt, Possession, or Transportation of a Firearm), or § 2K2.2 (Unlawful Trafficking and Other Prohibited Transactions Involving a Firearm), as applicable; or

(3) 12.

Commentary

*Statutory Provisions:* 18 U.S.C. 924 (b), (f), (g).".

*Reason for Amendment:* This amendment addresses a number of diverse substantive and technical issues, as well as the creation of several new offenses, and increased statutory maximum penalties for certain other offenses. Because there exist a large number of overlapping statutory provisions, the three basic guidelines, § 2K2.1 (Possession by a prohibited person), § 2K2.2 (Possession of certain types of weapons), and § 2K2.3 (Unlawful trafficking) are not closely tied to the actual conduct. The amendment addresses this issue by consolidating the current three guidelines into two guidelines: (1) unlawful possession, receipt, or transportation, and (2) unlawful trafficking; and by more carefully drawing the distinctions between the base offense levels provided. The third guideline in this amendment is a new guideline to address transfer of a weapon with intent or knowledge that it will be used to commit another offense (formerly covered in a cross reference) and a new offense added by the Anti-Drug Abuse Act of 1988 (Section 6211) (Interstate travel to acquire a firearm for a criminal purpose).

The base offense level for conduct covered by the current § 2K2.1 is increased in the amendment from 9 to 12. The statutorily authorized maximum sentence for the conduct covered under § 2K2.1 was increased from five to ten years by the Anti-Drug Abuse Act of 1988 (Section 6462). Note, however, that the most aggravated conduct under § 2K2.1 (possession of a weapon during commission of another offense) is handled by the cross-reference at subsection (c) and is based upon the offense level for an attempt to commit the underlying offense. See Background Commentary to current § 2K2.1. The offense level for unlawful possession of a machine gun, sawed off shotgun, or destructive device is increased from 12 to 16. In addition, the amendment raises the enhancement for stolen weapons or obliterated serial numbers from 1 to 2 levels to better reflect the seriousness of this conduct. The numbers currently used in the table for the distribution of multiple weapons in § 2K2.2 are amended to increase the offense level more rapidly for sale of multiple weapons.

*§ 2K2.4 Use of Firearms or Armor-Piercing Ammunition During or in Relation to Certain Crimes*

124. *Amendment:* Section 2K2.4 is amended by deleting "penalties are those" and inserting in lieu thereof "term of imprisonment is that".

The Commentary to § 2K2.4 captioned "Application Notes" is amended by inserting the following additional Note:

"3. Imposition of a term of supervised release is governed by the provisions of § 5D1.1 (Imposition of a Term of Supervised Release).".

Section 2K2.4 is amended by inserting "(a)" immediately before "If", and by inserting as an additional subsection the following:

"(b) Special Instructions for Fines:

(1) Where there is a federal conviction for the underlying offense, the fine guideline shall be the fine guideline that would have been applicable had there only been a conviction for the underlying offense. This guideline shall be used as a consolidated fine guideline for both the underlying offense and the conviction underlying this section.".

The Commentary to § 2K2.4 captioned "Application Notes" is amended by inserting the following as an additional Note:

"4. Subsection (b) sets forth special provisions concerning the imposition of fines. Where there is also a conviction for the underlying offense, a consolidated fine guideline is determined by the offense level that would have applied to the underlying offense absent a conviction under 18 U.S.C. 924(c) or 929(a). This is because the offense level for the underlying offense may be reduced when there is also a conviction under 18 U.S.C. 924(c) or 929(a) in that any specific offense characteristic for possession, use, or discharge of a firearm is not applied (see Application Note 2). The Commission has not established a fine guideline range for the unusual case in which there is no conviction for the underlying offense.".

*Reason for Amendment:* The purpose of this amendment is to address the imposition of a fine or term of supervised release when this guideline applies.

*§ 2K2.5 Possession of Firearms and Dangerous Weapons in Federal Facilities*

125. *Amendment:* Chapter Two, Part K is amended by adding the following new guideline and accompanying commentary:

*"§ 2K2.5 Possession of Firearms and Dangerous Weapons in Federal Facilities*

(a) Base Offense Level: 6

(b) Cross Reference

(1) If the defendant possessed the firearm or other dangerous weapon with intent to use it in the commission of another offense, apply § 2X1.1 (Attempt, Solicitation or Conspiracy) in respect to that other offense if the resulting offense level is greater than that determined above.

Commentary

*Statutory Provision:* 18 U.S.C. 930.".

*Reason for Amendment:* This amendment adds a guideline to cover a new offense enacted by Section 6215 of the Anti-Drug Abuse Act of 1988.

A base offense level of 6 is provided for the misdemeanor portion of this statute. The felony portion of this statute (possession with intent to commit another offense) is treated as if an attempt to commit that other offense.

*§ 2L1.1 Smuggling, Transporting, or Harboring an Unlawful Alien*

126. *Amendment:* Section 2L1.1(b) is amended by inserting as a new subsection the following:

"(3) If the defendant is an unlawful alien who has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, and the offense level determined above is less than level 8, increase to level 8.".

The Commentary to § 2L1.1 captioned "Application Notes" is amended in Note 6 by deleting "enhancement at § 2L1.1(b)(1) does not apply" and inserting in lieu thereof "reduction at § 2L1.1(b)(1) applies".

*Reason for Amendment:* The purposes of this amendment are to provide an offense level that is no less than that provided under § 2L1.2 in the case of a defendant who is a previously deported alien, and to conform Application Note 6 of the Commentary to § 2L1.1 to the January 1988 revision of § 2L1.1.

*§ 2L1.2 Unlawfully Entering or Remaining in the United States*

127. *Amendment:* Section 2L1.2 is amended by inserting the following as a specific offense characteristic:

"(b) Specific Offense Characteristic

(1) If the defendant previously was deported after sustaining a conviction for a felony, other than a felony involving violation of the immigration laws, increase by 4 levels.",

The Commentary to § 2L1.2 captioned "Application Notes" is amended by adding the following additional Notes:

"3. A 4-level increase is provided under subsection (b)(1) in the case of a defendant who was previously deported after sustaining a conviction for a felony, other than a felony involving a violation of the immigration laws. In the case of a defendant previously deported after sustaining a conviction for an aggravated felony as defined in 8 U.S.C. 1101(a), or for any other violent felony, an upward departure may be warranted.

4. The adjustment under § 2L1.2(b)(1) is in addition to any criminal history points added for such conviction in Chapter 4, Part A (Criminal History).".

*Reason for Amendment:* The purpose of this amendment is to add a specific offense characteristic to provide an increase in the case of an alien previously deported after conviction of a felony other than an immigration law violation. This specific offense characteristic is in addition to, and not in lieu of, criminal history points added for the prior sentence. The amendment provides for consideration of an upward departure where the previous deportation was for an "aggravated felony" or for any other violent felony.

*§ 2L1.3 Engaging in a Pattern of Unlawful Employment of Aliens*

128. *Amendment:* Section 2L1.3 and the Commentary thereto are amended by deleting the entire text thereof, including the title, as follows:

*"§ 2L1.3. Engaging in a Pattern of Unlawful Employment of Aliens*

(a) Base Offense Level: 6

Commentary

*Statutory Provision:* 8 U.S.C. 1324a(f)(1).

*Background:* The offense covered under this section is a misdemeanor for which the maximum term of imprisonment authorized by statute is six months.".

*Reason for Amendment:* The purpose of this amendment is to delete a guideline applying only to a petty offense. Petty offenses were deleted from coverage of the guidelines by the adoption of § 1B1.9 (effective June 15, 1988).

*§ 2L2.1 Trafficking in Evidence of Citizenship or Documents Authorizing Entry*

129. *Amendment:* Section 2L2.1(a) is amended by deleting "6" and inserting in lieu thereof "9".

Section 2L2.1(b)(1) is amended by deleting "for profit, increase by 3 levels" and inserting in lieu thereof "other than for profit, decrease by 3 levels".

*Reason for Amendment:* The purpose of this amendment is to conform the structure of this guideline to that of § 2L1.1.

*§ 2L2.2 Fraudulently Acquiring Evidence of Citizenship or Documents Authorizing Entry for Own Use*

130. *Amendment:* Section 2L2.2 is amended by inserting as a new subsection the following:

"(b) Specific Offense Characteristic

(1) If the defendant is an unlawful alien who has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, increase by 2 levels.".

The Commentary to § 2L2.2 captioned "Application Notes" is amended by deleting:

"1. In the case of a defendant who is an unlawful alien and has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, the Commission recommends an upward departure of 2 levels in order to provide a result equivalent to § 2L1.2.",

by renumbering Note 2 as Note 1, and by deleting "Notes" and inserting in lieu thereof "Note".

*Reason for Amendment:* The purpose of this amendment it to convert a departure recommendation into a specific offense characteristic.

*§ 2L2.3 (Trafficking in a United States Passport*

131. *Amendment:* Section 2L2.3(a) is amended by deleting "6" and inserting in lieu thereof "9".

Section 2L2.3(b)(1) is amended by deleting "for profit, increase by 3 levels" and inserting in lieu thereof "other than for profit, decrease by 3 levels".

*Reason for Amendment:* The purpose of this amendment is to conform the structure of this guideline to that of § 2L1.1.

*§ 2L2.4 Fraudulently Acquiring or Improperly Using a United States Passport*

132. *Amendment:* Section 2L2.4 is amended by inserting as a new subsection the following:

"(b) Specific Offense Characteristic

(1) If the defendant is an unlawful alien who has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, increase by 2 levels.".

The Commentary to § 2L2.4 captioned "Application Notes" is amended by deleting:

"1. In the case of a defendant who is an unlawful alien and has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, the Commission recommends an upward departure of 2 levels in order to provide a result equivalent to § 2L1.2.",

by renumbering Note 2 as Note 1, and by deleting "Notes" and inserting in lieu thereof "Note".

*Reason for Amendment:* The purpose of this amendment is to convert a departure recommendation into a specific offense characteristic.

*§ 2N3.1 Odometer Laws and Regulations)*

133. *Amendment:* Section 2N3.1 is amended by deleting:

"(b) If more than one vehicle was involved, apply § 2F1.1 (Offenses Involving Fraud or Deceit).",

and inserting in lieu thereof:

"(b) Cross Reference

(1) If the offense involved more than one vehicle, apply § 2F1.1 (Fraud and Deceit).".

*Reason for Amendment:* The purposes of this amendment are to correct a clerical error and to conform the phraseology of this subsection to that used elsewhere in the guidelines.

*§ 2P1.1 Escape, Instigating or Assisting Escape*

134. *Amendment:* Section 2P1.1(a) is amended by deleting:

"(1) 13, if from lawful custody resulting from a conviction or as a result of a lawful arrest for a felony;

(2) 8, if from lawful custody awaiting extradition, pursuant to designation as a recalcitrant witness or as a result of a lawful arrest for a misdemeanor.",

and inserting in lieu thereof:

"(1) 13, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense;

(2) 8, otherwise.".

*Reason for Amendment:* The purpose of this amendment is to clarify the language of the guideline by making it conform more closely to that used in 18 U.S.C. 751, the statute from which it was derived.

135. *Amendment:* Section 2P1.1(b)(3) is amended by deleting:

"If the defendant committed the offense while a correctional officer or other employee of the Department of Justice, increase by 2 levels.",

and inserting in lieu thereof:

"If the defendant was a law enforcement or correctional officer or employee, or an employee of the Department of Justice, at the time of the offense, increase by 2 levels.".

*Reason for Amendment:* The current specific offense characteristic (b)(3) applies only to correctional officers or Justice Department employees, and not to local or state law enforcement officers who might have custody of a federal prisoner, or even to federal law enforcement officers who are not employed by the Department of Justice (e.g., Secret Service agents are employed by the Treasury Department). It also does not appear to apply to law enforcement or correctional employees who are not sworn officers unless they are Justice Department employees. The purpose of this amendment is to correct this anomaly.

*§ 2P1.2 Providing or Possessing Contraband in Prison*

136. *Amendment:* Section 2P1.2(b)(1) is amended by deleting:

"If the defendant committed the offense while a correctional officer or other employee of the Department of Justice, increase by 2 levels.",

and inserting in lieu thereof:

"If the defendant was a law enforcement or correctional officer or employee, or an employee of the Department of Justice, at the time of the offense, increase by 2 levels.".

*Reason for Amendment:* The current specific offense characteristic (b)(1) applies only to correctional officers or Justice Department employees, and not to local or state law enforcement officers who might have custody of a federal prisoner, or even to federal law enforcement officers who are not employed by the Department of Justice (e.g., Secret Service agents are employed by the Treasury Department). It also does not appear to apply to enforcement or correctional employees who are not sworn officers unless they are Justice Department employees. The purpose of this amendment is to correct this anomaly.

137. *Amendment:* Section 2P1.2 is amended by inserting the following cross reference:

"(c) Cross Reference

(1) If the defendant is convicted under 18 U.S.C. 1791(a)(1) and is punishable under 18 U.S.C. 1791(b)(1), the offense level is 2 plus the offense level from § 2D1.1, but in no event less than level 26.".

The Commentary to § 2P1.2 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes", and by inserting the following as an additional Note:

"2. Pursuant to 18 U.S.C. 1791(c), as amended, a sentence imposed upon an inmate for a violation of 18 U.S.C. 1791 shall be consecutive to the sentence being served at the time of the violation.".

*Reason for Amendment:* This amendment implements the direction to the Commission in Section 6468 of the Anti-Drug Abuse Act of 1988.

*§ 2P1.4 Trespass on Bureau of Prisons Facilities*

138. *Amendment:* Section 2p1.4 and the Commentary thereto are amended by deleting the entire text, including the title, as follows:

"§ 2P1.4. Trespass on Bureau of Prisons Facilities

(a) Base Offense Level: 6

**Commentary**

*Statutory Provision:* 18 U.S.C. 1793.".

*Reason for Amendment:* The purpose of this amendment is to delete a guideline applying only to a petty offense. Petty offenses were deleted from coverage of the guidelines by the adoption of § 1B1.9 (effective June 15, 1988).

*§ 2Q1.3 Mishandling of Other Environmental Pollutants; Recordkeeping, Tampering and Falsification*

139. *Amendment:* The Commentary to § 2Q1.3 captioned "Statutory Provisions" is amended by deleting "§ 4912,".

*Reason for Amendment:* The purpose of this amendment is to delete a reference to a petty offense.

*§ 2Q1.4 Tampering or Attempted Tampering with Public Water System*

140. *Amendment:* Section 2Q1.4(b)(1) is amended by inserting "bodily" immediately preceding "injury".

The Commentary to § 2Q1.4 captioned "Application Note" is amended by deleting Note 1 and inserting in lieu thereof:

"1. 'Serious bodily injury' is defined in the Commentary to § 1B1.1 (Application Instructions).".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

*§ 2Q1.5 Threatened Tampering with Public Water System*

141. *Amendment:* Section 2Q1.5(b) is amended by deleting:

"(2) If the purpose of the offense was to influence government action or to extort money, increase by 8 levels.",

and by inserting as a new subsection:

"(c) Cross Reference

(1) If the purpose of the offense was to influence government action or to extort money, apply § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage).".

Section 2Q1.5(b) is amended by deleting "Characteristics" and inserting in lieu thereof "Characteristic".

*Reason for Amendment:* The purposes of this amendment are to convert a specific offense characteristic to a cross-reference and render the guidelines internally more consistent.

*§ 2Q1.6 Hazardous or Injurious Devices on Federal Lands*

142. *Amendment:* Chapter Two, Part Q, Subpart 1, is amended by inserting the following additional guideline and accompanying Commentary:

*"§ 2Q1.6. Hazardous or Injurious Devices on Federal Lands*

(a) Base Offense Level (Apply the greatest):

(1) If the intent was to violate the Controlled Substance Act, apply § 2D1.9 (Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances);

(2) If the intent was to obstruct the harvesting of timber, and property destruction resulted, apply § 2B1.3 (Property Damage or Destruction (Other Than by Arson or Explosives));

(3) If the offense involved reckless disregard to the risk that another person would be placed in danger of death or serious bodily injury under circumstances manifesting extreme indifference to such risk, the offense level from § 2A2.2 (Aggravated Assault);

(4) 6, otherwise.

*Statutory Provision:* 18 U.S.C. 1864.

*Background:* The statute covered by this guideline proscribes a wide variety of conduct, ranging from placing nails in trees to interfere with harvesting equipment to placing anti-personnel devices capable of causing death or serious bodily injury to protect the unlawful production of a controlled substance. Subsections (a)(1)–(a)(3) cover the more serious forms of this offense. Subsection (a)(4) provides a minimum offense level of 6 where the intent was to obstruct the harvesting of timber and little or no property damage resulted.".

*Reason for Amendment:* The proposed amendment adds a guideline to cover an offense created by Section 6254(f) of the Anti-Drug Abuse Act of 1988.

*§ 2Q2.1 Specially Protected Fish, Wildlife, and Plants*

*§ 2Q2.2 Lacey Act: Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants*

143. *Amendment:* Section 2Q2.1 is amended in the title by inserting at the end "; Smuggling and Otherwise

Unlawfully Dealing in Fish, Wildlife, and Plants".

The Commentary to § 2Q2.1 captioned "Statutory Provisions" is amended by inserting immediately before the period at the end ", 3373(d); 18 U.S.C. 545".

The Commentary to § 2Q2.1 captioned "Background" is amended by deleting "and the Fur Seal Act. These statutes provide special protection to particular species of fish, wildlife and plants." and inserting in lieu thereof "the Fur Seal Act, the Lacey Act, and to violations of 18 U.S.C. 545 where the smuggling activity involved fish, wildlife, or plants.".

Section 2Q2.2 is amended by deleting the guideline and the Commentary thereto, including the title, in its entirety, as follows:

*"§ 2Q2.2. Lacey Act; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants*

(a) Base Offense Level:

(1) 6, if the defendant knowingly imported or exported fish, wildlife, or plants, or knowingly engaged in conduct involving the sale or purchase of fish, wildlife, or plants with a market value greater than $350; or

(2) 4.

(b) Specific Offense Characteristics

(1) If the offense involved a commercial purpose, increase by 2 levels.

(2) If the offense involved fish, wildlife, or plants that were not quarantined as required by law, increase by 2 levels.

(3) Apply the greater:

(A) If the market value of the fish, wildlife, or plants exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit); or

(B) If the offense involved a quantity of fish, wildlife, or plants that was substantial in relation either to the overall population of the species or to a discrete subpopulation, increase by 4 levels.

**Commentary**

*Statutory Provisions:* 16 U.S.C. 3773(d); 18 U.S.C. 545.

*Application Note:*

1. This section applies to violations of 18 U.S.C. 545 where the smuggling activity involved fish, wildlife, or plants. In other cases, see §§ 2T3.1 and 2T3.2.

*Background:* This section applies to violations of the Lacey Act Amendments of 1981, 16 U.S.C. 3373(d), and to violations of 18 U.S.C. 545 where the smuggling activity involved fish, wildlife, or plants. These are the principal enforcement statutes utilized to combat interstate and foreign commerce in unlawfully taken fish, wildlife, and plants. The adjustments for specific offense characteristics are identical to those in § 2Q2.1.".

*Reason for Amendment:* The purpose of this amendment is to consolidate two guidelines that cover very similar offenses.

144. *Amendment:* Section 2Q2.1(b)(3) is amended by deleting "Apply the greater:" and inserting in lieu thereof "(If more than one applies, use the greater):".

*Reason for Amendment:* The purpose of this amendment is to conform the guideline to the style of other guidelines.

*§ 2R1.1 Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors*

145. *Amendment:* Section 2R1.1(b)(2) is amended in the first column of the table by deleting:

"Volume of Commerce
(A) less than $1,000,000
(B) $1,000,000–$4,000,000
(C) $4,000,001–$15,000,000
(D) $15,000,001–$50,000,000
(E) over $50,000,000",

and inserting in lieu thereof:

"Volume of Commerce (Apply the Greatest)
(A) Less than $1,000,000
(B) $1,000,000–$4,000,000
(C) More than $4,000,000
(D) More than $15,000,000
(E) More than $50,000,000".

*Reason for Amendment:* The purpose of this amendment is to eliminate minor gaps in the loss table.

*§ 2S1.1 Laundering of Monetary Instruments*

146. *Amendment:* Section 2S1.1(b)(2) is amended in the first column of the table by deleting:

"Value
(A) $100,000 or less
(B) $100,001–$200,000
(C) $200,001–$350,000
(D) $350,001–$600,000
(E) $600,001–$1,000,000
(F) $1,000,001–$2,000,000
(G) $2,000,001–$3,500,000
(H) $3,500,001–$6,000,000
(I) $6,000,001–$10,000,000
(J) $10,000,001–$20,000,000
(K) $20,000,001–$35,000,000
(L) $35,000,001–$60,000,000
(M) $60,000,001–$100,000,000
(N) more than $100,000,000",

and inserting in lieu thereof:

"Value (Apply the Greatest)
(A) $100,000 or less
(B) More than $100,000
(C) More than $200,000
(D) More than $350,000
(E) More than $600,000
(F) More than $1,000,000
(G) More than $2,000,000
(H) More than $3,500,000
(I) More than $6,000,000
(J) More than $10,000,000
(K) More than $20,000,000
(L) More than $35,000,000
(M) More than $60,000,000
(N) More than $100,000,000".

*Reason for Amendment:* The purpose of this amendment is to eliminate minor gaps in the value table.

147. *Amendment:* The Commentary to § 2S1.1 captioned "Background" is amended in the third paragraph by adding the following new sentence at the end thereof: "Effective November 18, 1988, 18 U.S.C. 1956(a)(1)(A) contains two subdivisions.

The base offense level of 23 applies to section 1956(a)(1)(A) (i) and (ii).".

*Reason for Amendment:* The purpose of this amendment is to reflect a statutory revision made by Section 6471 of the Anti-Drug Abuse Act of 1988.

148. *Amendment:* The Commentary to § 2S1.1 captioned "Background" is amended in the fourth paragraph by deleting "scope of the criminal enterprise as well as the degree of the defendant's involvement" and inserting in lieu thereof "magnitude of the criminal enterprise, and the extent to which the defendant aided the enterprise".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

*§ 2S1.2 Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity*

149. *Amendment:* Section 2S1.2(b)(1)(A) is amended by adding at the end "or".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

*§ 2S1.3 Failure to Report Monetary Transactions; Structuring Transactions to Evade Reporting Requirements*

150. *Amendment:* Section 2S1.3(a)(1)(C) is amended by deleting "the proceeds of criminal activity" and inserting in lieu thereof "criminally derived property", and in subsection (b)(1) by inserting "property" immediately following "criminally derived".

The Commentary to § 2S1.3 captioned "Application Note" is amended by deleting:

"1. As used in this guideline, funds or other property are the 'proceeds of criminal activity' or 'criminally derived' if they are 'criminally derived property,' within the meaning of 18 U.S.C. 1957.",

and inserting in lieu thereof:

"1. 'Criminally derived property' means any property constituting, or derived from, proceeds obtained from a criminal offense. See 18 U.S.C. 1957(f)(2).".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

151. *Amendment:* The Commentary to § 2S1.3 captioned "Statutory Provisions" is amended by inserting immediately before "31 U.S.C." "26 U.S.C. 7203 (if a willful violation of 26 U.S.C. 6050I);".

*Reason for Amendment:* The purpose of this amendment is to conform the guideline to a revision of the relevant statute.

152. *Amendment:* Section 2S1.3(a)(1)(A) is amended by adding "or" immediately following "requirements;".

Section 2S1.3(a)(1)(B) is amended by deleting "activity" and inserting in lieu thereof "evasion of reporting requirements".

The Commentary to § 2S1.3 captioned "Application Note" is amended in the captioned by deleting "Note" and inserting in lieu thereof "Notes", and by inserting the following as an additional Note:

"2. Subsection (a)(1)(C) applies where a reasonable person would have believed from the circumstances that the funds were criminally derived property. Subsection (b)(1) applies if the defendant knew or believed the funds were criminally derived property. Subsection (b)(1) applies in addition to, and not in lieu of, subsection (a)(1)(C). Where subsection (b)(1) applies, subsection (a)(1)(C) also will apply. It is possible that a defendant 'believed' or 'reasonably should have believed' that the funds were criminally derived property even if, in fact, the funds were not so derived (e.g., in a 'sting' operation where the defendant is told the funds were derived from the unlawful sale of controlled substances).".

The Commentary to § 2S1.3 captioned "Background" is amended by deleting:

"The base offense level is set at 13 for the great majority of cases. However, the base offense level is set at 5 for those cases in which these offenses may be committed with innocent motives and the defendant reasonably believed that the funds were from legitimate sources. The higher base offense level applies in all other cases. The offense level is increased by 5 levels if the defendant knew that the funds were criminally derived.",

and inserting in lieu thereof:

"A base offense level of 13 is provided for those offenses where the defendant either structured the transaction to evade reporting requirements, made false statements to conceal or disguise the activity, or reasonably should have believed that the funds were criminally derived property. A lower alternative base offense level of 5 is provided in all other cases. The Commission anticipates that such cases will involve simple recordkeeping or other more minor technical violations of the regulatory scheme governing certain monetary transactions committed by defendants who reasonably believe that the funds at issue emanated from legitimate sources.

Where the defendant actually knew or believed that the funds were criminally derived property, subsection (b)(1) provides for a 5 level increase in the offense level.".

The Commentary to § 2S1.3 captioned "Statutory Provisions" is amended by inserting "18 U.S.C. 1005;" immediately following "Provisions".

*Reason for Amendment:* The purposes of this amendment are to clarify the guideline and Commentary, to provide more complete statutory references, and to conform the format of the guideline to that used in other guidelines.

*§ 2T1.1 Tax Evasion*

153. *Amendment:* Section 2T1.1(a) is amended by deleting "When more than one year is involved, the tax losses are to be added.".

The Commentary to § 2T1.1 captioned "Application Notes" is amended in Note 2 by deleting "The court is to determine this amount as it would any other guideline factor." and inserting in lieu thereof "Although the definition of tax loss corresponds to what is commonly called the 'criminal deficiency,' its amount is to be determined by the same rules applicable in determining any other sentencing factor.".

The Commentary to § 2T1.1 captioned "Application Notes" is amended in Note 3 by deleting:

"Although the definition of tax loss corresponds to what is commonly called the 'criminal deficiency,' its amount is to be determined by the same rules applicable in determining any other sentencing factor. In accordance with the 'relevant conduct' approach adopted by the guidelines, tax losses resulting from more than one year are to be added whether or not the defendant is convicted of multiple counts.",

and by inserting in lieu thereof:

"In determining the total tax loss attributable to the offense (see § 1B1.3(a) (2)), all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated. The following examples are illustrative of conduct that is part of the same course of conduct or common scheme or plan: (a) There is a continuing pattern of violations of the tax laws by the defendant; (b) the defendant uses a consistent method to evade or camouflage income, e.g., backdating documents or using off shore accounts; (c) the violations involve the same or a related series of transactions; (d) the violation in each instance involves a false or inflated claim of a similar deduction or credit; and (e) the violation in each instance involves a failure to report or an understatement of a specific source of income, e.g., interest from savings accounts or income from a particular business activity. These examples are not intended to be exhaustive.".

*Reason for Amendment:* The purposes of this amendment are to clarify the determination of tax loss and to make this instruction consistent among §§ 2T1.1–2T1.3.

154. *Amendment:* Section 2Tl.1(a) is amended by deleting ", including interest to the date of filing an indictment or information". The Commentary to § 2T1.1 captioned "Application Notes" is amended in Note 2 by deleting ", plus interest to the date of the filing of an indictment or information" and by inserting "interest or" immediately before "penalties.".

*Reason for Amendment:* The purpose of this amendment is to simplify the application of the guideline by deleting interest from the calculation of tax loss.

155. *Amendment:* Section 2T1.1(b)(1) is amended by deleting "(A)" and ", or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income", by inserting "or to correctly identify the source of" immediately after "report", and by deleting "per" and inserting in lieu thereof "in any".

*Reason for Amendment:* The purposes of this amendment are to provide a more objective test for application of this enhancement, and to make clear that this enhancement applies if the defendant fails to report or disguises income exceeding $10,000 from criminal activity in any year.

156. *Amendment:* The Commentary to § 2T1.1 captioned "Application Notes" is amended in Note 6 by deleting "Whether 'sophisticated means' were employed (§ 2T1.1(b)(2)) requires a subjective determination similar to that in § 2F1.1(b)(2)." and inserting in lieu thereof: "'Sophisticated means,' as used in § 2T1.1(b)(2), includes conduct that is more complex or demonstrates greater intricacy or planning than a routine tax-evasion case.".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

157. *Amendment:* The Commentary to § 2T1.1 captioned "Background" is amended in the second paragraph by deleting "Tax Table" wherever it appears and inserting in lieu thereof in each instance "Sentencing Table".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

*§ 2T1.2 Willful Failure to File Return, Supply Information, or Pay Tax*

158. *Amendment:* Section 2T1.2(b)(1) is amended by deleting "(A)" and ", or (B) the offense concealed or furthered criminal activity from which the

defendant derived a substantial portion of his income", by inserting "or to correctly identify the source of" immediately after "report", and by deleting "per" and inserting in lieu thereof "in any".

*Reason for Amendment:* The purposes of this amendment are to provide a more objective test for application of this enhancement, and to make clear that this enhancement applies if the defendant fails to report or disguises income exceeding $10,000 from criminal activity in any year.

159. *Amendment:* Section 2Tl.2 is amended by inserting the following as an additional subsection:

"(c) Cross Reference

(1) If the defendant is convicted of a willful violation of 26 U.S.C. 6050I, apply § 2S1.3 (Failure to Report Monetary Transactions) in lieu of this guideline.".

The Commentary to § 2T.2 captioned "Statutory Provision" is amended by inserting immediately before the period at the end of the sentence "(other than a willful violation of 26 U.S.C. § 6050I)".

*Reason for Amendment:* The purpose of this amendment is to reflect a revision of 26 U.S.C. 6050I made by Section 7601 of the Anti-Drug Abuse Act of 1988.

160. *Amendment:* The Commentary to § 2T1.2 captioned "Application Notes" is amended in Note 2 by deleting "Whether 'sophisticated means' were employed (§ 2T1.2(b)(2)) requires a determination similar to that in § 2F1.1(b)(2)." and inserting in lieu thereof: "'Sophisticated means,' as used in § 2T1.2(b)(2), includes conduct that is more complex or demonstrates greater intricacy or planning than a routine tax-evasion case.".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

161. *Amendment:* The Commentary to § 2T1.2 captioned "Application Note" is amended in the caption by deleting "Note" and inserting in lieu thereof "Notes", and by inserting the following additional Note:

"3. In determining the total tax loss attributable to the offense (see § 1B1.3(a)(2)), all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated. See Application Note 3 of the Commentary to § 2T1.1.".

*Reason for Amendment:* The purpose of this amendment is to clarify the determination of tax loss.

*§ 2T1.3 Fraud and False Statements Under Penalty of Perjury*

162. *Amendment:* Section 2T1.3(b)(1) is amended by deleting "(A)" and ", or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income", by inserting "or to correctly identify the source of" immediately after "report", and by deleting "per" and inserting in lieu thereof "in any".

*Reason for Amendment:* The purposes of this amendment are to provide a more objective test for application of this enhancement, and to make clear that this enhancement applies if the defendant fails to report or disguises income exceeding $10,000 from criminal activity in any year.

163. *Amendment:* The Commentary to § 2T1.3 captioned "Application Notes" is amended in Note 2 by deleting "Whether 'sophisticated means' were employed (§ 2T1.3(b)(2)) requires a determination similar to that in § 2F1.1(b)(2)." and inserting in lieu thereof: " 'Sophisticated means,' as used in § 2T1.3(b)(2), includes conduct that is more complex or demonstrates greater intricacy or planning than a routine tax-evasion case.".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

164. *Amendment:* The Commentary to § 2T1.3 captioned "Application Notes" is amended by inserting the following as an additional Note:

"3. In determining the total tax loss attributable to the offense (see § 1B1.3(a)(2)), all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated. See Application Note 3 of the Commentary to § 2T1.1.".

*Reason for Amendment:* The purpose of this amendment is to clarify the determination of tax loss.

*§ 2T1.4 Aiding, Assisting, Procuring, Counseling, or Advising Tax Fraud*

165. *Amendment:* The Commentary to § 2T1.4 captioned "Application Notes" is amended in Note 2 by deleting "Whether 'sophisticated means' were employed (§ 2T1.1(b)(2)) requires a determination similar to that in § 2F1.1(b)(2)." and inserting in lieu thereof: " 'Sophisticated means,' as used in § 2T1.4(b)(2), includes conduct that is more complex or demonstrates greater intricacy or planning than a routine tax-evasion case.".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

*§ 2T1.6 Failing to Collect or Truthfully Account for and Pay Over Tax*

166. *Amendment:* Section 2T1.6(a) is amended by deleting ", plus interest".

*Reason for Amendment:* The purpose of this amendment is to simplify the application of the guideline by deleting interest from the calculation of tax loss.

*§ 2T1.9 Conspiracy to Impair, Impede or Defeat Tax*

167. *Amendment:* Section 2T1.9(b) is amended by deleting "either of the following adjustments" and inserting in lieu thereof "more than one".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

168. *Amendment:* The Commentary to section 2T1.9 captioned "Application Notes" is amended by deleting:

"2. The minimum base offense level is 10. If a tax loss from the conspiracy can be established under either § 2T1.1 or § 2T1.3 (whichever applies to the underlying conduct), and that tax loss corresponds to a higher offense level in the Tax Table (§ 2T4.1), use that higher base offense level.

3. The specific offense characteristics are in addition to those specified in § 2T1.1 and § 2T1.3.

4. Because the offense is a conspiracy, adjustments from Chapter Three, Part B (Role in the Offense) usually will apply.",

and inserting in lieu thereof:

"2. The base offense level is the offense level (base offense level plus any applicable specific offense characteristics) from § 2T1.1 or § 2T1.3 (whichever is applicable to the underlying conduct) if that offense level is greater than 10. Otherwise, the base offense level is 10.

3. Specific offense characteristics from § 2T1.9(b) are to be applied to the base offense level determined under § 2T1.9(a)(1) or (2).".

*Reason for Amendment:* The purpose of this amendment is to clarify Application Notes 2 and 3. Application Note 4 (the content of which does not appear in any of the other guidelines covering conspiracy) is deleted as unnecessary.

*§ 2T3.1 Evading Import Duties or Restrictions (Smuggling)*

169. *Amendment:* The Commentary to § 2T3.1 captioned "Application Notes" is amended in Note 2 by inserting "if the increase in market value due to importation is not readily ascertainable" immediately following "United States".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

*§ 2T3.2 Receiving or Trafficking in Smuggled Property*

170. *Amendment:* The Commentary to § 2T3.2 is amended by inserting at the end:

"Application Note:

1. Particular attention should be given to those items for which entry is prohibited, limited, or restricted. Especially when such items are harmful or protective quotas are in effect, the duties evaded on such items may not adequately reflect the harm to society or protected industries resulting from their importation. In such instances, the court should impose a sentence above the guideline. A sentence based upon an alternative measure of the 'duty' evaded, such as the increase in market value due to importation, or 25 percent of the items' fair market value in the United States if the increase in market value due to importation is not readily ascertainable, might be considered.".

*Reason for Amendment:* The purpose of this amendment is to clarify the application of the guideline by adding the text from Application Note 2 of the Commentary to § 2T3.1, which applies equally to this guideline section.

*§ 2T4.1 Tax Table*

171. *Amendment:* Section 2T4.1 is amended in the first column of the tax table by deleting:

| | Offense level |
|---|---|
| "Tax loss: | |
| (A) less than $2,000 | 6 |
| (B) $2,000–$5,000 | 7 |
| (C) $5,001–$10,000 | 8 |
| (D) $10,001–$20,000 | 9 |
| (E) $20,001–$40,000 | 10 |
| (F) $40,001–$80,000 | 11 |
| (G) $80,001–$150,000 | 12 |
| (H) $150,001–$300,000 | 13 |
| (I) $300,001–$500,000 | 14 |
| (J) $500,001–$1,000,000 | 15 |
| (K) $1,000,001–$2,000,000 | 16 |
| (L) $2,000,001–$5,000,000 | 17 |
| (M) more than $5,000,000 | 18", |

and inserting in lieu thereof:

| | Offense level |
|---|---|
| "Tax loss (apply the greatest): | |
| (A) $2,000 or less | 6 |
| (B) More than $2,000 | 7 |
| (C) More than $5,000 | 8 |
| (D) More than $10,000 | 9 |
| (E) More than $20,000 | 10 |
| (F) More than $40,000 | 11 |
| (G) More than $70,000 | 12 |
| (H) More than $120,000 | 13 |
| (I) More than $200,000 | 14 |
| (J) More than $350,000 | 15 |
| (K) More than $500,000 | 16 |
| (L) More than $800,000 | 17 |
| (M) More than $1,500,000 | 18 |
| (N) More than $2,500,000 | 19 |
| (O) More than $5,000,000 | 20 |
| (P) More than $10,000,000 | 21 |
| (Q) More than $20,000,000 | 22 |
| (R) More than $40,000,000 | 23 |
| (S) More than $80,000,000 | 24". |

*Reason for Amendment:* The purposes of this amendment are to increase the offense levels for offenses with larger losses in order to provide additional deterrence and better reflect the seriousness of the conduct, and to eliminate minor gaps in the table.

*§ 2X1.1 Attempt, Solicitation, or Conspiracy Not Covered by a Specific Guideline*

172. *Amendment:* Section 2X1.1(b)(1) is amended by deleting "or solicitation".

Section 2X1.1(b) is amended by deleting:

"(3) If a solicitation, and the statute treats solicitation identically with the object of the offense, do not apply § 2X1.1(b)(1); i.e., the offense level for solicitation is the same as that for the object offense.",

and inserting in lieu thereof:

"(3)(A) If a solicitation, decrease by 3 levels unless the person solicited to commit or aid the offense completed all the acts he believed necessary for successful completion of the object offense or the circumstances demonstrate that the person was about to complete all such acts but for apprehension or interruption by some similar event beyond such person's control.

(B) If the statute treats solicitation of the offense identically with the object offense, do not apply subdivision (A) above; i.e., the offense level for solicitation is the same as that for the object offense.".

*Reason for Amendment:* The current subsection (b)(1) does not clearly address how a solicitation is to be treated where the person solicited to commit the offense completes all the acts necessary for the successful completion of the offense. The purpose of this amendment is to clarify the treatment of such cases in a manner consistent with the treatment of attempts and conspiracies.

173. *Amendment:* Section 2X1.1 is amended in the title by deleting "Not Covered by a Specific Guideline" and inserting in lieu thereof "(Not Covered by a Specific Offense Guideline)".

Section 2X1.1 is amended by inserting the following additional subsection:

"(c) Cross Reference

(1) When an attempt, solicitation, or conspiracy is expressly covered by another offense guideline section, apply that guideline section.".

The Commentary to § 2X1.1 captioned "Application Notes" is amended by deleting Note 1 as follows:

"1. Certain attempts, conspiracies, and solicitations are covered by specific guidelines (e.g., § 2A2.1 includes attempt, conspiracy, or solicitation to commit murder; § 2A3.1 includes attempted criminal sexual abuse; and § 2D1.4 includes attempts and conspiracies to commit controlled substance offenses). Section 2X1.1 applies only in the absence of a more specific guideline.",

and inserting in lieu thereof:

"1. Certain attempts, conspiracies, and solicitations are expressly covered by other offense guidelines.

Offense guidelines that expressly cover attempts include: § 2A2.1 (Assault With Intent to Commit Murder; Conspiracy or Solicitation to Commit Murder; Attempted Murder); § 2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse); § 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt to Commit Such Acts); § 2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts); § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact); § 2A4.2 (Demanding or Receiving Ransom Money); § 2A5.1 (Aircraft Piracy or Attempted Aircraft Piracy); § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right); § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity); § 2D1.4 (Attempts and Conspiracies); § 2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan); § 2N1.1 (Tampering or Attempting to Tamper Involving Risk of Death or Serious Injury); § 2Q1.4 (Tampering or Attempted Tampering with Public Water System).

Offense guidelines that expressly cover conspiracies include: § 2A2.1 (Assault With Intent to Commit Murder; Conspiracy or Solicitation to Commit Murder; Attempted Murder); § 2D1.4 (Attempts and Conspiracies); § 2H1.2 (Conspiracy to Interfere with Civil Rights); § 2T1.9 (Conspiracy to Impair, Impede or Defeat Tax).

Offense guidelines that expressly cover solicitations include: § 2A2.1 (Assault with Intent to Commit Murder; Conspiracy or Solicitation to Commit Murder; Attempted Murder); § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right); § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity); § 2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan).".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

174. *Amendment:* The Commentary to § 2X1.1 captioned "Application Notes" is amended by deleting:

"4. If the defendant was convicted of conspiracy or solicitation and also for the completed offense, the conviction for the conspiracy or solicitation shall be imposed to run concurrently with the sentence for the

object offense, except in cases where it is otherwise specifically provided for by the guidelines or by law. 28 U.S.C. 994(1)(2).".

*Reason for Amendment:* The purpose of this amendment is to delete an application note that does not apply to any determination under this section. The circumstances which this application note addresses are covered under Chapter Three, Part D and Chapter Five, Part G.

175. *Amendment:* The Commentary to § 2X1.1 captioned "Application Notes" is amended by inserting the following as an additional Note:

"4. In certain cases, the participants may have completed (or have been about to complete but for apprehension or interruption) all of the acts necessary for the successful completion of part, but not all, of the intended offense. In such cases, the offense level for the count (or group of closely-related multiple counts) is whichever of the following is greater: the offense level for the intended offense minus 3 levels (under § 2X1.1 (b)(1), (b)(2), or (b)(3)(A)), or the offense level for the part of the offense for which the necessary acts were completed (or about to be completed but for apprehension or interruption). For example, where the intended offense was the theft of $800,000 but the participants completed (or were about to complete) only the acts necessary to steal $30,000, the offense level is the offense level for the theft of $800,000 minus 3 levels, or the offense level for the theft of $30,000, whichever is greater.

In the case of multiple counts that are not closely-related counts, whether the 3-level reduction under § 2X1.1(b) (1) or (2) applies is determined separately for each count.".

*Reason for Amendment:* The purpose of this amendment is to clarify how the guidelines are to be applied to partially completed offenses.

176. *Amendment:* The Commentary to § 2X1.1 captioned "Application Notes" is amended in the last sentence of Note 2 by deleting "intended" and inserting in lieu thereof "attempted".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

*§ 2X3.1 Accessory After the Fact*

177. *Amendment:* The Commentary to § 2X3.1 captioned "Application Notes" is amended in Note 1 by deleting:

" 'Underlying offense' means the offense as to which the defendant was an accessory.",

and inserting in lieu thereof:

" 'Underlying offense' means the offense as to which the defendant is convicted of being an accessory. Apply the base offense level plus any applicable specific offense characteristics that were known, or reasonably should have been known, by the defendant; see Application Note 1 of the Commentary to § 1B1.3 (Relevant Conduct).".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

*§ 2X4.1 Misprision of Felony*

178. *Amendment:* The Commentary to § 2X4.1 captioned "Application Notes" is amended in Note 1 by deleting:

" 'Underlying offense' means the offense as to which the misprision was committed.",

and inserting in lieu thereof:

" 'Underlying offense' means the offense as to which the defendant is convicted of committing the misprision. Apply the base offense level plus any applicable specific offense characteristics that were known, or reasonably should have been known, by the defendant; see Application Note 1 of the Commentary to § 1B1.3 (Relevant Conduct).".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

*§ 3A1.1 Vulnerable Victim*

179. *Amendment:* Section 3A1.1 is amended by deleting "the victim" wherever it appears and inserting in lieu thereof in each instance "a victim", and by inserting "otherwise" immediately before "particularly".

The Commentary to § 3A1.1 captioned Application Notes is amended in Note 1 by deleting:

"any offense where the victim's vulnerability played any part in the defendant's decision to commit the offense",

and inserting in lieu thereof:

"offenses where an unusually vulnerable victim is made a target of criminal activity by the defendant",

and by deleting:

"sold fraudulent securities to the general public and one of the purchasers",

and inserting in lieu thereof:

"sold fraudulent securities by mail to the general public and one of the victims".

*Reason for Amendment:* The purpose of the amendment is to clarify the guideline and Commentary.

*§ 3A1.2 Official Victim*

180. *Amendment:* Section 3A1.2 is amended by deleting "any law-enforcement or corrections officer, any other official as defined in 18 U.S.C. 1114, or a member of the immediate family thereof, and" and inserting in lieu thereof "a law enforcement or corrections officer; a former law enforcement or corrections officer; an officer or employee included in 18 U.S.C. 1114; a former officer or employee included in 18 U.S.C. 1114; or a member of the immediate family of any of the above, and".

*Reason for Amendment:* The purpose of this amendment is to expand the coverage of this provision to reflect a statutory revision effected by Section 6487 of the Anti-Drug Abuse Act of 1988.

181. *Amendment:* Section 3A1.2 is amended by deleting "If the victim" and inserting in lieu thereof:

"If—

(a) the victim",

and by deleting "crime was motivated by such status, increase by 3 levels." and inserting in lieu thereof:

"offense of conviction was motivated by such status; or

(b) during the course of the offense or immediate flight therefrom, the defendant or a person for whose conduct the defendant is otherwise accountable, knowing or having reasonable cause to believe that a person was a law enforcement or corrections officer, assaulted such officer in a manner creating a substantial risk of serious bodily injury,

increase by 3 levels.".

The Commentary to § 3A1.2 captioned "Application Notes" is amended by adding at the end the following:

"4. 'Motivated by such status' in subdivision (a) means that the offense of conviction was motivated by the fact that the victim was a law enforcement or corrections officer or other person covered under 18 U.S.C. 1114, or a member of the immediate family thereof. This adjustment would not apply, for example, where both the defendant and victim were employed by the same government agency and the offense was motivated by a personal dispute.

5. Subdivision (b) applies in circumstances tantamount to aggravated assault against a law enforcement or corrections officer, committed in the course of, or in immediate flight following, another offense, such as bank robbery. While this subsection may apply in connection with a variety of offenses that are not by nature targeted against official victims, its applicability is limited to assaultive conduct against law enforcement or corrections officers that is sufficiently serious to create at least a 'substantial risk of serious bodily injury' and that is proximate in time to the commission of the offense.

6. The phrase 'substantial risk of serious bodily injury' in subdivision (b) is a threshold level of harm that includes any more serious injury that was risked, as well as actual serious bodily injury (or more serious harm) if it occurs.".

*Reason for Amendment:* The purpose of the amendment is to set forth more clearly the categories of cases to which this adjustment is intended to apply.

182. *Amendment:* The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 3 by inserting the following as an additional sentence:

"In most cases, the offenses to which subdivision (a) will apply will be from Chapter Two, Part A (Offenses Against the Person). The only offense guideline in

Chapter Two, Part A that specifically incorporates this factor is § 2A2.4 (Obstructing or Impeding Officers).".

*Reason for Amendment:* The purpose of this amendment is to clarify the application of the guideline.

*§ 3A1.3 Restraint of Victim*

183. *Amendment:* Section 3A1.3 is amended by deleting "the victim of a crime" and inserting in lieu thereof "a victim".

The Commentary to § 3A1.3 captioned "Application Notes" is amended in Note 2 by deleting "the victim" and inserting in lieu thereof "a victim".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

184. *Amendment:* The Commentary to § 3A1.3 captioned "Application Notes" is amended by inserting as an additional Note:

"3. If the restraint was sufficiently egregious, an upward departure may be warranted. See § 5K2.4 (Abduction or Unlawful Restraint).".

*Reason for Amendment:* The purpose of this amendment is to clarify the relationship between § 3A1.3 and § 5K2.4.

*§ 3C1.1 Willfully Obstructing or Impeding Proceedings*

185. *Amendment:* Section 3C1.1 is amended by deleting "from Chapter Two".

*Reason for Amendment:* The purpose of this amendment is to delete an incorrect reference.

186. *Amendment:* The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 4 by deleting:

", except in determining the combined offense level as specified in Chapter Three, Part D (Multiple Counts). Under § 3D1.2(e), a count for obstruction will be grouped with the count for the underlying offense. Ordinarily, the offense level for that Group of Closely Related Counts will be the offense level for the underlying offense, as increased by the 2-level adjustment specified by this section. In some instances, however, the offense level for the obstruction offense may be higher, in which case that will be the offense level for the Group. See § 3D1.3(a). In cases in which a significant further obstruction occurred during the investigation or prosecution of an obstruction offense itself (one of the above listed offenses), an upward departure may be warranted (e.g., where a witness to an obstruction offense is threatened during the course of the prosecution for the obstruction offense).",

and inserting in lieu thereof:

"to the offense level for that offense except where a significant further obstruction occurred during the investigation or prosecution of the obstruction offense itself (e.g., where the defendant threatened a witness during the course of the prosecution for the obstruction offense). Where the defendant is convicted both of the obstruction offense and the underlying offense, the count for the obstruction offense will be grouped with the count for the underlying offense under subsection (c) of § 3D1.2 (Groups of Closely-Related Counts). The offense level for that Group of Closely-Related Counts will be the offense level for the underlying offense increased by the 2-level adjustment specified by this section, or the offense level for the obstruction offense, whichever is greater.".

*Reason for Amendment:* The purpose of this amendment is to resolve an inconsistency between the Commentary in this section and the Commentaries in Chapter Two, Part J.

*§ 3D1.2 Groups of Closely-Related Counts*

187. *Amendment:* Section 3D1.2(b)(3) is amended by deleting "section 994(u)" and inserting in lieu thereof "section 994(v)".

Section 3D1.2(d) is amended by deleting ", 2D1.3", ", 2G3.2", and ", 2P1.4".

*Reason for Amendment:* The purposes of this amendment are to correct an erroneous reference, and to delete references to two guidelines covering petty offenses that have been deleted and to a guideline that has been deleted by consolidation with another guideline.

188. *Amendment:* The Commentary to § 3D1.2 Captioned "Application Notes" is amended in Note 3 by deleting "(6)", "(7)", and "(8)" and inserting in lieu thereof "(5)", "(6)", and "(7)" respectively.

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

189. *Amendment:* The Commentary to § 3D1.2 captioned "Application Notes" is amended in Note 9 by inserting after the second sentence:

"See § 1B1.2(d) and accompanying commentary.".

*Reason for Amendment:* The purpose of this amendment is to cross reference the newly created guideline subsection dealing with a multiple object conspiracy.

190. *Amendment:* The Commentary to § 3D1.2 captioned "Background" is amended by deleting:

"In general, counts are grouped together only when they involve both the same victim (or societal harm in 'victimless' offenses) and the same or contemporaneous transactions, except as provided in § 3D1.2 (c) or (d).",

and inserting in lieu thereof:

"Counts involving different victims (or societal harms in the case of 'victimless' crimes) are grouped together only as provided in subsection (c) or (d).",

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

*§ 3D1.3 Offense Level Applicable to Each Group of Closely-Related Counts*

191. *Amendment:* Section 3D1.3(b) is amended in the second sentence by deleting "varying", and by inserting "of the same general type to which different guidelines apply (e.g., theft and fraud)" immediately following "offenses".

*Reason for Amendment:* The purpose of this amendment is to enhance the clarity of the guideline.

*§ 3E1.1 Acceptance of Responsibility*

192. *Amendment:* The Commentary to § 3E1.1 captioned "Application Notes" is amended by deleting:

"4. An adjustment under this section is not warranted where a defendant perjures himself, suborns perjury, or otherwise obstructs the trial or the administration of justice (see § 3C1.1), regardless of other factors.",

and inserting in lieu thereof:

"4. Conduct resulting in an enhancement under § 3Cl.1 (Willfully Obstructing or Impeding Proceedings) ordinarily indicates that the defendant has not accepted responsibility for his criminal conduct. There may, however, be extraordinary cases in which adjustments under both §§ 3C1.1 and 3E1.1 may apply.".

*Reason for Amendment:* The purposes of this amendment are to provide for extraordinary cases in which adjustments under both § 3C1.1 and § 3E1.1 are appropriate, and to clarify the reference to obstructive conduct.

*§ 4A1.1 Criminal History Category*

193. *Amendment:* Section 4A1.1(e) is amended by inserting "or while in imprisonment or escape status on such a sentence" immediately before the period at the end of the first sentence.

The Commentary to § 4A1.1 captioned "Application Notes" is amended in the second sentence of Note 5 by deleting "still in confinement" and inserting in lieu thereof "in imprisonment or escape status".

*Reason for Amendment:* The purpose of this amendment is to clarify that subsection (e) applies to defendants who are still in confinement status at the time of the instant offense (e.g., a defendant who commits the instant offense while in prison or on escape status).

194. *Amendment:* The Commentary to § 4A1.1 captioned "Application Notes" is amended in Note 4 by inserting at the end the following additional sentence: "For the purposes of this item, a 'criminal justice sentence' means a

sentence countable under § 4A1.2 (Definitions and Instructions for Computing Criminal History).".

*Reason for Amendment:* The purpose of this amendment is to clarify the application of the guideline.

195. *Amendment:* The Commentary to § 4A1.1 captioned "Background" is amended in the third paragraph by inserting "a" immediately before "criminal", and by deleting "control" and inserting in lieu thereof "sentence".

*Reason for Amendment:* The purpose of this amendment is to conform the Commentary to the guideline.

*§ 4A1.2 Definitions and Instructions for Computing Criminal History*

196. *Amendment:* Section 4A1.2(e)(1) is amended by inserting ", whenever imposed," immediately preceding "that resulted", and deleting "defendant's incarceration" and inserting in lieu thereof "defendant being incarcerated".

*Reason for Amendment:* The purpose of this amendment is to make clear that "resulted in the defendant's incarceration" applies to any part of the defendant's imprisonment and not only to the commencement of the defendant's imprisonment.

197. *Amendment:* Section 4A1.2(e) is amended by inserting, as an additional subsection, the following:

"(4) The applicable time period for certain sentences resulting from offenses committed prior to age eighteen is governed by § 4A1.2(d)(2).".

*Reason for Amendment:* The purpose of this amendment is to clarify the relationship between § 4A1.2(d)(2) and (e).

198. *Amendment:* Section 4A1.2(f) is amended by inserting ", or a plea of nolo contendere," immediately following "admission of guilt".

*Reason for Amendment:* The purpose of this amendment is to clarify that a plea of nolo contendere is equivalent to a finding of guilt for the purpose of § 4A1.2(f).

199. *Amendment:* The Commentary to § 4A1.2 captioned "Application Notes" is amended in Note 8 by deleting "4A1.2(e)" and inserting in lieu thereof "4A1.2 (d)(2) and (e)" and by inserting the following new sentence immediately after the first sentence:

"As used in § 4A1.2 (d)(2) and (e), the term 'commencement of the instant offense' includes any relevant conduct. See § 1B1.3 (Relevant Conduct).".

*Reason for Amendment:* The purposes of this amendment are to correct a clerical error by inserting a reference to § 4A1.2(d)(2), and to clarify that "commencement of the instant offense" includes any relevant conduct.

*§ 4B1.1 Career Offender*

200. *Amendment:* Section 4B1.1 is amended by deleting "Offense Level" and inserting in lieu thereof "Offense Level*", and by inserting at the end:

"*If an adjustment from § 3E1.1 (Acceptance of Responsibility) applies, decrease the offense level by 2 levels.".

*Reason for Amendment:* The purpose of this amendment is to authorize the application of § 3E1.1 (Acceptance of Responsibility) to the determination of the offense level under this section.

201. *Amendment.* The Commentary to § 4B1.1 captioned "Application Note" is amended by inserting as a new Note:

"2. 'Offense Statutory Maximum' refers to the maximum term of imprisonment authorized for the offense of conviction that is a crime of violence or controlled substance offense. If more than one count of conviction is of a crime of violence or controlled substance offense, use the maximum authorized term of imprisonment for the count that authorizes the greatest maximum term of imprisonment.",

and in the caption by deleting "Note" and inserting in lieu thereof "Notes".

The Commentary to § 4B1.1 captioned "Background" is amended by deleting "128 Cong. Rec. 12792, 97th Cong., 2d Sess. (1982) ('Career Criminals' amendment No. 13 by Senator Kennedy), 12796 (explanation of amendment), and 12798 (remarks by Senator Kennedy)" and inserting in lieu thereof: "128 Cong. Rec. 26, 511–12 (1982) (text: of 'Career Criminals' amendment by Senator Kennedy), 26, 515 (brief summary of amendment), 26, 517–18 (statement of Senator Kennedy)".

*Reason for Amendment:* The purposes of this amendment are to clarify the operation of the guideline and to provide a citation to the more readily available edition of the Congressional Record.

*§ 4B1.2 Definitions*

202. *Amendment:* Section 4B1.2 is amended by deleting "is defined under 18 U.S.C. 16" and inserting in lieu thereof:

"means any offense under federal or state law punishable by imprisonment for a term exceeding one year that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another, or

(ii) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another".

Section 4B1.2 is amended by deleting "identified in 21 U.S.C. 841, 845(b), 856, 952(a), 955, 955(a), 959; and similar offenses" and inserting in lieu thereof: "under a federal or state law prohibiting the manufacture, import, export, or distribution of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, or distribute.".

The Commentary to § 4B1.2 captioned "Application Notes" is amended by deleting:

"1. 'Crime of violence' is defined in 18 U.S.C. 16 to mean an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that by its nature involves a substantial risk that physical force against the person or property of another may be used in committing the offense. The Commission interprets this as follows: murder, manslaughter, kidnapping, aggravated assault, extortionate extension of credit, forcible sex offenses, arson, or robbery are covered by this provision. Other offenses are covered only if the conduct for which the defendant was specifically convicted meets the above definition. For example, conviction for an escape accomplished by force or threat of injury would be covered; conviction for an escape by stealth would not be covered. Conviction for burglary of a dwelling would be covered; conviction for burglary of other structures would not be covered.

2. 'Controlled substance offense' includes any federal or state offense that is substantially similar to any of those listed in subsection (2) of the guideline. These offenses include manufacturing, importing, distributing, dispensing, or possessing with intent to manufacture, import, distribute, or dispense, a controlled substance (or a counterfeit substance). This definition also includes aiding and abetting, conspiring, or attempting to commit such offenses, and other offenses that are substantially equivalent to the offenses listed.",

and inserting in lieu thereof:

"1. The terms 'crime of violence' and 'controlled substance offense' include the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.

2. 'Crime of violence' includes murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension of credit, and burglary of a dwelling. Other offenses are included where (A) that offense has as an element the use, attempted use, or threatened use, of physical force against the person of another, or (B) the conduct set forth in the count of which the defendant was convicted included use of explosives or, by its nature, presented a serious potential risk of physical injury to another.".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 4 by deleting "§ 4A1.2(e) (Applicable Time Period), § 4A1.2(h) (Foreign Sentences), and § 4A1.2(j) (Expunged Convictions)" and inserting in lieu thereof "§ 4A1.2 (Definitions and

Instructions for Computing Criminal History)", and by deleting "Also applicable is the Commentary to § 4A1.2 pertaining to invalid convictions.".

*Reason for Amendment:* The purpose of this amendment is to clarify the definitions of crime of violence and controlled substance offense used in this guideline. The definition of crime of violence used in this amendment is derived from 18 U.S.C. 924(e). In addition, the amendment clarifies that all pertinent definitions and instructions in § 4B1.2 apply to this section.

*§ 4B1.3 Criminal Livelihood*

203. *Amendment:* Section 4B1.3 is amended by deleting "from which he derived a substantial portion of his income" and inserting in lieu thereof "engaged in as a livelihood".

The Commentary to § 4B1.3 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes", and by inserting as an additional Note:

"2. 'Engaged in as a livelihood' means that (1) the defendant derived income from the pattern of criminal conduct that in any twelve-month period exceeded 2,000 times the then existing hourly minimum wage under federal law (currently 2,000 × the hourly minimum wage under Federal law is $6,700); and (2) the totality of circumstances shows that such criminal conduct was the defendant's primary occupation in that twelve-month period (e.g., the defendant engaged in criminal conduct rather than regular, legitimate employment; or the defendant's legitimate employment was merely a front for his criminal conduct).".

The Commentary to § 4B1.3 captioned "Application Notes" is amended in Note 1 by deleting "This guideline is not intended to apply to minor offenses.".

The Commentary to § 4B1.3 captioned "Background" is amended by deleting "proportion" and inserting in lieu thereof "portion".

*Reason for Amendment:* The purpose of this amendment is to provide a better definition of the intended scope of this enhancement. Compare, for example, *U.S.* v. *Kerr*, 686 F. Supp. 1174 (W.D. Penn. 1988) with U.S. v. Rivera, 694 F. Supp. 1105 (S.D. N.Y. 1988). The first prong of the proposed definition in application Note 2 above is derived from former 18 U.S.C. 3575, the provision from which the statutory instruction underlying this guideline (28 U.S.C. 994 (i)(2)) was itself derived.

**Chapter Five, Part A—Sentencing Table**

204. *Amendment:* Chapter 5, Part A is amended in the Sentencing Table by deleting "0–1, 0–2, 0–3, 0–4, and 0–5" wherever it appears, and inserting in each instance "0–6".

*Reason for Amendment:* This amendment provides that the maximum of the guideline range is six months wherever the minimum of the guideline range is zero months. The court has discretion to impose a sentence of up to 6 months or a $5,000 fine for a Class B misdemeanor (Class B or C misdemeanors and infractions are not covered by the guidelines; see § 1B1.9). It appears anomalous that the Commission guidelines allow less discretion for certain felonies and Class A misdemeanors. In fact, in certain cases, a plea to a reduced charge of a Class B misdemeanor could result in a higher potential sentence because the sentence for the felony or Class A misdemeanor might be restricted to less than 6 months by the guidelines. This can happen when the Sentencing Table provides a guideline range of 0–1 month, 0–2 months, 0–3, 0–4, or 0–5 months. These very narrow ranges are not required by statute, which allows a 6 month guideline range in such cases.

This anomaly is removed by amending the guideline table to provide that whenever the lower limit of the guideline range is 0 months, the upper limit of the guideline range is six months.

There is a similar anomaly in the Fine Table at § 5E4.2, in that the maximum of the fine table is, in certain cases, less than the $5,000 authorized for petty offenses.

Providing a fine range of $100–$5,000 for an offense level of 3 or less, and $250–$5,000 for an offense level of 4 or 5, removes this anomaly. Moreover, because the guidelines now cover only Class A misdemeanors and felonies, the amendment increases the minimum fine guideline to $100.

**Chapter Five, Parts B—F**

205. *Amendment:* Section 5B1.4(b)(20) is amended by inserting ", but only as a substitute for imprisonment" immediately following "release".

Section 5C2.1(c)(2) is amended by deleting "or community confinement" and inserting in lieu thereof ", community confinement, or home detention".

Section 5C2.1(c)(3) is amended by inserting "or home detention" immediately following "community confinement".

Section 5C2.1(d)(2) is amended by inserting "or home detention" immediately following "community confinement".

Section 5C2.1(e) is amended by inserting at the end:

"(3) One day of home detention for one day of imprisonment.",

and by deleting the period at the end of subsection (e)(2) and inserting a semicolon in lieu thereof.

The Commentary to § 5C2.1 captioned "Application Notes" is amended in the first sentence of the second subparagraph of Note 3 by deleting "intermittent confinement or community confinement, or combination of intermittent and community confinement," and by inserting in lieu thereof "intermittent confinement, community confinement, or home detention, or combination of intermittent confinement, community confinement, and home detention,".

The Commentary to § 5C2.1 captioned "Application Notes" is amended in the second sentence of the second subparagraph of Note 3 by deleting "intermittent or community confinement" and by inserting in lieu thereof "intermittent confinement, community confinement, or home detention".

The Commentary to § 5C2.1 captioned "Application Notes" is amended in the third subparagraph of Note 3 by inserting "or home detention" immediately following "community confinement", wherever it appears.

The Commentary to § 5C2.1 captioned "Application Notes" is amended in the last paragraph of Note 3 by inserting "or home detention" immediately following "community confinement", wherever it appears.

The Commentary to § 5C2.1 captioned "Application Notes" is amended in Note 4 by inserting "or home detention" immediately following "community confinement", wherever it appears.

The Commentary to § 5C2.1 captioned "Application Notes" is amended in Note 5 by deleting "Home detention may not be substituted for imprisonment.".

Section 5F5.2 is amended by inserting ", but only as a substitute for imprisonment" immediately following "release".

The Commentary to § 5F5.2 captioned "Application Notes" is amended in Note 1 by deleting:

" 'Home detention' means a program of confinement and supervision that restricts the defendant to his place of residence continuously, or during specified hours, enforced by appropriate means of surveillance by the probation office. The judge may also impose other conditions of probation or supervised release appropriate to effectuate home detention. If the confinement is only during specified hours, the defendant shall engage exclusively in gainful employment, community service or treatment during the non-residential hours.",

and inserting in lieu thereof:

" 'Home detention' means a program of confinement and supervision that restricts the defendant to his place of residence continuously, except for authorized absences, enforced by appropriate means of surveillance by the probation office. When an order of home detention is imposed, the defendant is required to be in his place of residence at all times except for approved absences for gainful employment, community service, religious services, medical care, educational or training programs, and at such other times as may be specifically authorized. Electronic monitoring is an appropriate means of surveillance and ordinarily should be used in connection with home detention. However, alternative means of surveillance may be used so long as they are as effective as electronic monitoring.".

The Commentary to § 5F5.2 captioned "Application Notes" is amended in Note 2 by deleting:

"Home detention generally should not be imposed for a period in excess of six months. However, a longer term may be appropriate for disabled, elderly or extremely ill defendants who would otherwise be imprisoned.",

and by inserting in lieu thereof:

"The court may impose other conditions of probation or supervised release appropriate to effectuate home detention. If the court concludes that the amenities available in the residence of a defendant would cause home detention not to be sufficiently punitive, the court may limit the amenities available.".

The Commentary to § 5F5.2 captioned "Application Notes" is amended by inserting the following as an additional Note:

"3. The defendant's place of residence, for purposes of home detention, need not be the place where the defendant previously resided. It may be any place of residence, so long as the owner of the residence (and any other person(s) from whom consent is necessary) agrees to any conditions that may be imposed by the court, e.g., conditions that a monitoring system be installed, that there will be no "call forwarding" or "call waiting" services, or that there will be no cordless telephones or answering machines.".

The Commentary to § 5F5.2 is amended by inserting the following at the end:

*"Background:* The Commission has concluded that the surveillance necessary for effective use of home detention ordinarily requires electronic monitoring. However, in some cases home detention may effectively be enforced without electronic monitoring, e.g., when the defendant is physically incapacitated, or where some other effective means of surveillance is available. Accordingly, the Commission has not required that electronic monitoring be a necessary condition for home detention. Nevertheless, before ordering home detention without electronic monitoring, the court should be confident that an alternative form of surveillance will be equally effective. In the usual case, the Commission assumes that a condition requiring that the defendant seek and maintain gainful employment will be imposed when home detention is ordered.".

*Reason for Amendment:* The purpose of this amendment is to conform the guidelines with Section 7305 of the Anti-Drug Abuse Act of 1988.

206. *Amendment:* Section 5B1.4(b) is amended by inserting the following additional paragraph at the end:

"(25) Curfew

If the court concludes that restricting the defendant to his place of residence during evening and nighttime hours is necessary to provide just punishment for the offense, to protect the public from crimes that the defendant might commit during those hours, or to assist in the rehabilitation of the defendant, a condition of curfew is recommended. Electronic monitoring may be used as a means of surveillance to ensure compliance with a curfew order.".

Section 5B1.4 is amended by inserting the following Commentary at the end:

**Commentary**

*Application Note:*

"1. Home detention, as defined by § 5F5.3, may only be used as a substitute for imprisonment. See § 5C2.1 (Imposition of a Term of Imprisonment). Under home detention, the defendant, with specified exceptions, is restricted to his place of residence during all nonworking hours. Curfew, which limits the defendant to his place of residence during evening and nighttime hours, is less restrictive than home detention and may be imposed as a condition of probation whether or not imprisonment could have been ordered.".

*Reason for Amendment:* The purpose of this amendment is to set forth the conditions under which curfew is a recommended condition of probation and clarify that electronic monitoring may be used as a means of surveillance in connection with an order of curfew.

*§ 5B1.3 Conditions of Probation*

207. *Amendment:* Section 5B1.3(c) is amended by inserting immediately before the period at the end of the first sentence the following:

", unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the other conditions set forth under 18 U.S.C. § 3563(b)".

*Reason for Amendment:* The purpose of this amendment is to conform the guideline to a statutory revision.

208. *Amendment:* Section 5B1.3(a) is amended by inserting at the end "The court shall also impose a condition that the defendant not possess illegal controlled substances. 18 U.S.C. 3563(a)(3).".

Section 5B1.3 is amended by inserting the following as Commentary:

**"Commentary**

A broader form of the condition required under 18 U.S.C. 3563(a)(3) (pertaining to possession of controlled substances) is set forth as recommended condition (7) at § 5B1.4 (Recommended Conditions of Probation and Supervised Release).".

*Reason for Amendment:* This amendment references a mandatory condition of probation added by Section 7303 of the Anti-Drug Abuse Act of 1988.

*§ 5C2.1 Imposition of a Term of Imprisonment*

209. *Amendment:* Section 5C2.1(e) is amended by deleting "Thirty days" and inserting in lieu thereof "One day", by deleting "one month" wherever it appears and inserting in lieu thereof in each instance "one day", and by deleting "One month" and inserting in lieu thereof "One day".

*Reason for Amendment:* The purpose of this amendment is to enhance the internal consistency of the guidelines.

*§ 5D3.3 Conditions of Supervised Release*

210. *Amendment:* Section 5D3.3 is amended by deleting:

"(b) In order to fulfill any authorized purposes of sentencing, the court may impose other conditions reasonably related to (1) the nature and circumstances of the offense, and (2) the history and characteristics of the defendant. 18 U.S.C. 3583(d).",

and inserting in lieu thereof:

"(b) The court may impose other conditions of supervised release, to the extent that such conditions are reasonably related to (1) the nature and circumstances of the offense and the history and characteristics of the defendant, and (2) the need for the sentence imposed to afford adequate deterrence to criminal conduct, to protect the public from further crimes of the defendant, and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. 18 U.S.C. 3553(a)(2) and 3583(d).".

*Reason for Amendment:* The purposes of this amendment are to clarify the guideline and conform it to the statute as amended by Section 7108 of the Anti-Drug Abuse Act of 1988.

211. *Amendment:* Section 5D3.3(a) is amended by inserting at the end "The court shall also impose a condition that the defendant not possess illegal controlled substances. 18 U.S.C. 3563(a)(3).".

The Commentary to § 5D3.3 captioned "Background" is amended by inserting as the last sentence: "A broader form of the condition required under 18 U.S.C.

3563(a)(3) (pertaining to possession of controlled substances) is set forth as recommended condition (7) at § 5B1.4 (Recommended Conditions of Probation and Supervised Release).".

*Reason for Amendment:* This amendment references a mandatory condition of supervised release added by section 7303 of the Anti-Drug Abuse Act of 1988.

*§ 5E4.1 Restitution*

212. *Amendment:* Section 5E4.1 is amended by inserting the following as an additional subsection:

"(c) With the consent of the victim of the offense, the court may order a defendant to perform services for the benefit of the victim in lieu of monetary restitution or in conjunction therewith. 18 U.S.C. 3663(b)(4).".

*Reason for Amendment:* The purpose of this amendment is to insert language previously contained in § 5F5.3(b) where it had been erroneously placed.

213. *Amendment:* Section 5E4.1 is amended in the Commentary entitled "Background" by deleting:

"See S. Rep. No. 225, 98th Cong., 1st Sess. 95–96.",

and inserting in lieu thereof:

"See 18 U.S.C. 3563(b)(3) as amended by section 7110 of Pub. L. No. 100–690 (1988).".

*Reason for Amendment:* This amendment replaces a reference to legislative history with a citation to a revised statute. Section 7110 of the Anti-Drug Abuse Act of 1988 confirms the authority of a sentencing court to impose restitution as a condition of probation. Previously, such authority was inferred from 18 U.S.C. 3563(b)(20) (defendant may be ordered to "satisfy such other conditions as the court may impose") and from legislative history.

*§ 5E4.2 Fines for Individual Defendants*

214. *Amendment:* Section 5E4.2(a) is amended by deleting:

"If the guideline for the offense in Chapter Two prescribes a different rule for imposing fines, that rule takes precedence over this subsection.".

Section 5E4.2(b) is amended by inserting at the end the following additional sentence:

"If, however, the guideline for the offense in Chapter Two provides a specific rule for imposing a fine, that rule takes precedence over subsection (c) of this section.".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline. The last sentence of current § 5E4.2(a) is in the wrong place. This amendment moves the content of this sentence to subsection (b) where it belongs.

215. *Amendment:* Section 5E4.2(c)(3) is amended by deleting:

"1—$25—$250; 2–3—$100—$1,000; 4–5—$250—$2,500",

and inserting in lieu thereof:

"3 and below—$100—$5,000; 4–5—$250—$5,000".

*Reason for Amendment:* This amendment revises the fine table for offense levels 5 and below for the reasons set forth at the amendment to the Sentencing Table in Chapter Five, Part A.

*§ 5E4.3 Special Assessments*

216. *Amendment:* The Commentary to Section 5E4.3 captioned "Background" is amended in the first paragraph by inserting at the end:

"Under the Victims of Crime Act, as amended by Section 7085 of the Anti-Drug Abuse Act of 1988, the court is required to impose assessments in the following amounts with respect to offenses committed on or after November 18, 1988.

*Individuals:*

$5, if the defendant is an individual convicted of an infraction or a Class C misdemeanor;
$10, if the defendant is an individual convicted of a Class B misdemeanor;
$25, if the defendant is an individual convicted of a Class A misdemeanor; and
$50, if the defendant is an individual convicted of a felony.

Organizations:

$50, if the defendant is an organization convicted of a Class B misdemeanor;
$125, if the defendant is an organization convicted of a Class A misdemeanor; and
$200, if the defendant is an organization convicted of a felony. 18 U.S.C. 3013.",

and in the second paragraph by deleting "The Act requires the court" and inserting in lieu thereof "With respect to offenses committed prior to November 18, 1988, the court is required".

*Reason for Amendment:* The purpose of this amendment is to conform the commentary to the statute as amended by Section 7085 of the Anti-Drug Abuse Act of 1988.

*§ 5F5.3 Community Service*

217. *Amendment:* Section 5F5.3(a) is amended by deleting "(a)", and by inserting "and sentenced to probation" immediately following "felony".

Section 5F5.3(b) is amended by deleting:

"(b) With the consent of the victim of the offense, the court may order a defendant to perform services for the benefit of the victim in lieu of monetary restitution. 18 U.S.C. 3663(b)(4).".

*Reason for Amendment:* The purposes of this amendment are to correct an erroneous statement in § 5F5.3(a) and to delete § 5F5.3(b), which deals with restitution, and therefore should appear at § 5E4.1.

*§ 5F5.4 Order of Notice to Victims*

218. *Amendment:* The Commentary to § 5F5.4 captioned "Background" is amended by deleting:

"The legislative history indicates that, although the sanction was designed to provide actual notice to victims, a court might properly limit notice to only those victims who could be most readily identified, if to do otherwise would unduly prolong or complicate the sentencing process.".

*Reason for Amendment:* The purpose of this amendment is to delete an unnecessary statement that could be subject to misinterpretation.

*§ 5F5.5 Occupational Restrictions*

219. *Amendment:* Section 5F5.5(a) is amended by deleting:

"(2) there is a risk that, absent such restriction, the defendant will continue to engage in unlawful conduct similar to that for which the defendant was convicted; and
(3) imposition of such a restriction is reasonably necessary to protect the public.",

and inserting in lieu thereof:

"(2) imposition of such a restriction is reasonably necessary to protect the public because there is reason to believe that, absent such restriction, the defendant will continue to engage in unlawful conduct similar to that for which the defendant was convicted.",

and by inserting "and" at the end of subsection (a)(1).

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

*§ 5G1.1 Sentencing on a Single Count of Conviction*

220. *Amendment:* Section 5G1.1 and the accompanying Commentary are amended by deleting:

"(a) If application of the guidelines results in a sentence above the maximum authorized by statute for the offense of conviction, the statutory maximum shall be the guideline sentence.
(b) If application of the guidelines results in a sentence below the minimum sentence required by statute, the statutory minimum shall be the guideline sentence.
(c) In any other case, the sentence imposed shall be the sentence as determined from application of the guidelines.

**Commentary**

If the statute requires imposition of a sentence other than that required by the guidelines, the statute shall control. The sentence imposed should be consistent with the statute but as close as possible to the guidelines.",

and inserting in lieu thereof:

"(a) Where the statutorily authorized maximum sentence is less than the minimum of the applicable guideline range, the statutorily authorized maximum sentence shall be the guideline sentence.

(b) Where a statutorily required minimum sentence is greater than the maximum of the applicable guideline range, the statutorily required minimum sentence shall be the guideline sentence.

(c) In any other case, the sentence may be imposed at any point within the applicable guideline range, provided that the sentence—

(1) is not greater than the statutorily authorized maximum sentence, and

(2) is not less than any statutorily required minimum sentence.

**Commentary**

This section describes how the statutorily authorized maximum sentence, or a statutorily required minimum sentence, may affect the determination of a sentence under the guidelines. For example, if the applicable guideline range is 51–63 months and the maximum sentence authorized by statute for the offense of conviction is 48 months, the sentence required by the guidelines under subsection (a) is 48 months; a sentence of less than 48 months would be a guideline departure. If the applicable guideline range is 41–51 months and there is a statutorily required minimum sentence of 60 months, the sentence required by the guidelines under subsection (b) is 60 months; a sentence of more than 60 months would be a guideline departure. If the applicable guideline range is 51–63 months and the maximum sentence authorized by statute for the offense of conviction is 60 months, the guideline range is restricted to 51–60 months under subsection (c).".

*Reason for Amendment:* The purpose of this amendment is to clarify the guideline.

*§ 5G1.2 Sentencing on Multiple Counts of Conviction*

221. *Amendment:* The Commentary to § 5G1.2 is amended in the second paragraph by deleting "any combination of concurrent and consecutive sentences that produces the total punishment may be imposed" and inserting in lieu thereof "consecutive sentences are to be imposed to the extent necessary to achieve the total punishment.".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

222. *Amendment:* The Commentary to § 5G1.2 is amended by inserting the following as an additional paragraph immediately following the first paragraph:

"This section applies to multiple counts of conviction (1) contained in the same indictment or information, or (2) contained in different indictments or informations for which sentences are to be imposed at the same time or in a consolidated proceeding.".

*Reason for Amendment:* The purpose of this amendment is to clarify that this guideline applies in the case of separate indictments that are consolidated for purposes of sentencing.

*§ 5G1.3 Convictions on Counts Related to Unexpired Sentences*

223. *Amendment:* Section 5G1.3, and the Commentary thereto, is deleted in its entirety as follows:

*"§ 5G1.3 Convictions on Counts Related to Unexpired Sentences*

If at the time of sentencing, the defendant is already serving one or more unexpired sentences, then the sentences for the instant offense(s) shall run consecutively to such unexpired sentences, unless one or more of the instant offenses(s) arose out of the same transactions or occurrences as the unexpired sentences. In the latter case, such instant sentences and the unexpired sentences shall run concurrently, except to the extent otherwise required by law.

**Commentary**

This section reflects the statutory presumption that sentences imposed at different times ordinarily run consecutively. See 18 U.S.C. 3584(a). This presumption does not apply when the new counts arise out of the same transaction or occurrence as a prior conviction.

Departure would be warranted when independent prosecutions produce anomalous results that circumvent or defeat the intent of the guidelines.",

and the following inserted in lieu thereof:

*"§ 5G1.3 Imposition of a Sentence on a Defendant Serving an Unexpired Term of Imprisonment*

If the instant offense was committed while the defendant was serving a term of imprisonment (including work release, furlough, or escape status), the sentence for the instant offense shall be imposed to run consecutively to the unexpired term of imprisonment.

**Commentary**

Under this guideline, the court shall impose a consecutive sentence where the instant offense (or any part thereof) was committed while the defendant was serving an unexpired term of imprisonment.

Where the defendant is serving an unexpired term of imprisonment, but did not commit the instant offense while serving that term of imprisonment, the sentence for the instant offense may be imposed to run consecutively or concurrently with the unexpired term of imprisonment. The court should impose a sentence for the instant offense that results in a combined sentence that approximates the total punishment that would have been imposed under § 5G1.2 (Sentencing on Multiple Counts of Conviction) had all of the offenses been federal offenses for which sentences were being imposed at the same time.".

*Reason for Amendment:* This amendment specifies circumstances in which a consecutive sentence is required by the guidelines. Erroneous language in the Commentary to this guideline concerning 18 U.S.C. 3584(a) is deleted.

*§ 5K1.1 Substantial Assistance to Authorities (Policy Statement)*

224. *Amendment:* Section 5K1.1 is amended by deleting "made a good faith effort to provide" and inserting in lieu thereof "provided".

Section 5K1.1(a) is amended in the first sentence by deleting "conduct".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commission's intent that departures under this policy statement be based upon the provision of substantial assistance. The existing policy statement could be interpreted as requiring only a willingness to provide such assistance. The amendment also makes an editorial correction.

*§ 5K1.2 Refusal to Assist (Policy Statement)*

225. *Amendment:* The Commentary to § 5K1.2 is deleted in its entirety as follows:

**"Commentary**

Background: The Commission considered and rejected the use of a defendant's refusal to assist authorities as an aggravating sentencing factor. Refusal to assist authorities based upon continued involvement in criminal activities and association with accomplices may be considered, however, in evaluating a defendant's sincerity in claiming acceptance of responsibility.".

*Reason for Amendment:* The purpose of this amendment is to delete unnecessary Commentary containing an unclear example.

**Chapter Five, Part K, Subpart 2 (General Provisions)**

226. *Amendment:* Chapter Five, Part K is amended by adding at the end:

*"§ 5K2.15 Terrorism (Policy Statement)*

If the defendant committed the offense in furtherance of a terroristic action, the court may increase the sentence above the authorized guideline range.".

*Reason for Amendment:* This amendment adds a specific policy statement concerning consideration of an upward departure when the offense is committed for a terroristic purpose. This amendment does not make a substantive change. Such conduct is currently included in the broader policy statement at § 2K2.9 (Criminal Purpose) and other policy statements. See *United States* v. *Yu Kikumura*, Crim. No. 88–16 (D. N.J. Feb. 9, 1989) (1989 U.S. Dist. LEXIS 1516).

*§ 6A1.1 Presentence Report*

227. *Amendment:* Section 6A1.1 is amended in the title by inserting at the end "(Policy Statement)".

*Reason for Amendment:* The purpose of this amendment is to designate § 6A1.1 as a policy statement. Designation of this section as a policy statement is more consistent with the nature of the subject matter.

*§ 6A1.3 Resolution of Disputed Factors*

228. *Amendment:* Section 6A1.3 is amended in the title by inserting at the end "(Policy Statement)".

*Reason for Amendment:* The purpose of this amendment is to designate § 6A1.3 as a policy statement. Designation of this section as a policy statement is more consistent with the nature of the subject matter.

*§ 6B1.2 Standards for Acceptance of Plea Agreements (Policy Statement)*

229. *Amendment:* The Commentary to § 6B1.2 is amended in the second paragraph by deleting "and does not undermine the basic purposes of sentencing.", and inserting in lieu thereof "(i.e., that such departure is authorized by 18 U.S.C. 3553(b)). See generally Chapter 1, Part A (4)(b)(Departures).".

*Reason for Amendment:* The purpose of this amendment is to clarify the Commentary.

**Appendix A (Statutory Index)**

230. *Amendment:* Appendix A (Statutory Index) is amended in the second sentence of the "Introduction" by deleting "conduct" and inserting in lieu thereof "nature of the offense conduct charged in the count", and by deleting "select" and inserting in lieu thereof "use"; and in the third sentence of the "Introduction" by deleting "the court is to apply" and inserting in lieu thereof "use", by deleting "which is", and by deleting "conduct for" and inserting in lieu thereof "nature of the offense conduct charged in the count of".

*Reason for Amendment:* The purpose of this amendment is to clarify the operation of the Statutory Index in relation to §§ 1B1.1 and 1B1.2(a).

231. *Amendment:* Appendix A is amended by inserting as an additional paragraph at the end of the Introduction:

"The guidelines do not apply to any count of conviction that is a Class B or C misdemeanor or an infraction. (See § 1B1.9.)".

Appendix A is amended by deleting:

"7 U.S.C. 52, 2N2.1","7 U.S.C. 60, 2N2.1","10 U.S.C. 847, 2J1.1, 2J1.5","16 U.S.C. 198c, 2B1.1, 2B1.3, 2B2.3","16 U.S.C. 204c, 2B1.1, 2B1.3","16 U.S.C. 604, 2B1.3","16 U.S.C. 606, 2B1.1, 2B1.3","16 U.S.C. 668dd, 2Q2.1","16 U.S.C. 670j(a)(1), 2B2.3","16 U.S.C. 676, 2B2.3","16 U.S.C. 682, 2B2.3","16 U.S.C. 683, 2B2.3", "16 U.S.C. 685, 2B2.3", "16 U.S.C. 689b, 2B2.3", "16 U.S.C. 692a, 2B2.3", "16 U.S.C. 694a, 2B2.3", "18 U.S.C. 113(d), 2A2.3", "18 U.S.C. 113(e), 2A2.3", "18 U.S.C. 290, 2F1.1", "18 U.S.C. 402, 2J1.1", "18 U.S.C. 437, 2C1.3", "18 U.S.C. 1164, 2B1.3", "18 U.S.C. 1165, 2B2.3", "18 U.S.C. 1382, 2B2.3", "18 U.S.C. 1504, 2J1.2", "18 U.S.C. 1726, 2F1.1","18 U.S.C. 1752, 2B2.3","18 U.S.C. 1793, 2P1.4","18 U.S.C. 1856, 2B1.3", "18 U.S.C. 1863, 2B2.3", "40 U.S.C. 193e, 2B1.1, 2B1.3", "42 U.S.C. 1995, 2J1.1", "42 U.S.C. 2000h, 2J1.1", "42 U.S.C. 4912, 2Q1.3".

*Reason for Amendment:* The purposes of this amendment are to clarify that the guidelines do not apply to any count of conviction that is a Class B or C misdemeanor or an infraction, and to delete references to statutes that apply solely to such offenses.

232. *Amendment:* Appendix A is amended by deleting:

"18 U.S.C. 1512, 2J1.2",

and inserting in lieu thereof:

"18 U.S.C. 1512(a), 2A1.1, 2A1.2, 2A2.1, 18 U.S.C. 1512(b), 2A2.2, 2J1.2., 18 U.S.C. 1512(c), 2J1.2",

and by deleting:

"21 U.S.C. 848, 2D1.5",

and inserting in lieu thereof:

"21 U.S.C. 848(a), 2D1.5, 21 U.S.C. 848(b), 2D1.5, 21 U.S.C. 848(e), 2A1.1".

Appendix A is amended by inserting the following statutes in the appropriate place according to statutory title and section number:

"18 U.S.C. 247, 2H1.3","18 U.S.C. 709, 2F1.1","18 U.S.C. 930, 2K2.5","18 U.S.C. 1460, 2G3.1","18 U.S.C. 1466, 2G3.1","18 U.S.C. 1516, 2J1.2","18 U.S.C. 1716C, 2B5.2","18 U.S.C. 1958, 2A2.1, 2E1.4","18 U.S.C. 1959, 2E1.3","42 U.S.C. 7270b, 2B2.3","43 U.S.C. 1773(a), (43 CFR 4140.1(b)(1)(i)), 2B2.3", "49 U.S.C. 1472(c), 2A5.2".

Appendix A is amended on the line beginning "18 U.S.C. 371" by inserting "2A2.1, 2D1.4," immediately before "2T1.9".

Appendix A is amended in the line beginning "18 U.S.C. 1005" by inserting ", § 2S1.3" immediately following "2F1.1".

Appendix A is amended in the line beginning "18 U.S.C. 1028" by inserting "2L1.2, 2L2.1, 2L2.3 immediately following "2F1.1".

Appendix A is amended in the line beginning "26 U.S.C. 7203" by inserting "2S1.3," immediately before "2T1.2".

*Reason for Amendment:* The purpose of this amendment is to make the statutory index more comprehensive.

233. *Amendment:* Appendix A is amended in the line beginning "18 U.S.C. 113(a)" by deleting ", 2A3.1" .

Appendix A is amended in the line beginning "18 U.S.C. 1854" by deleting ", 2B2.3".

Appendix A is amended in the line beginning "42 U.S.C. 2278(a)(c)" by deleting "42 U.S.C. 2278(a)(c)" and inserting in lieu thereof "42 U.S.C. 2278a(c)".

*Reason for Amendment:* The purposes of this amendment are to delete incorrect references and to insert a correct reference.

234. *Amendment:* Appendix A is amended by inserting the following statutes in the appropriate place according to statutory title and section number:

"18 U.S.C. 2251A.....2G2.3",
"21 U.S.C. 858.....2D1.10".

Appendix A is amended on the line beginning "18 U.S.C. 1464" by deleting "§ 2G3.1" and inserting in lieu thereof "§ 2G3.2" and by inserting the following statute in the appropriate place according to statutory title and section number:

"18 U.S.C. 1468.....2G3.2".

Appendix A is amended on the line beginning "21 U.S.C. 845" by deleting "2D1.3" and inserting in lieu thereof "2D1.2", and on the line beginning "21 U.S.C. 845a" by deleting "2D1.3" and inserting in lieu thereof "2D1.2".

Appendix A is amended in the line beginning "47 U.S.C. 223" by deleting "47 U.S.C. 223" and inserting in lieu thereof "47 U.S.C. 223(b)(1)(A)".

*Reason for Amendment:* The purpose of this amendment is to reflect the creation of new offense guidelines.

235. *Amendment:* Appendix A is amended on the line beginning "18 U.S.C. 844(h)" by deleting ", 2K1.6" and inserting in lieu thereof "(offenses committed prior to November 18, 1988), 2K1.6, 2K1.7".

*Reason for Amendment:* The purpose of this amendment is to reflect a revision in the offense covered by 18 U.S.C. 844(h).

**Correction of Chapter Five Subpart Numbers**

236. *Amendment:* Sections 5C2.1, 5D3.1, 5D3.2, 5D3.3, 5E4.1, 5E4.2, 5E4.3, 5E4.4, 5F5.1, 5F5.2, 5F5.3, 5F5.4, and 5F5.5 are amended by deleting the number designating the subpart (i.e., the digit immediately following the letter in the section designation) wherever it appears and inserting in lieu thereof "1" in each instance.

The Commentary to § 2D1.1 captioned "Background" is amended by deleting "§§ 5D3.1–5D3.3" and inserting in lieu thereof "§§ 5D1.1–5D1.3".

*Reason for Amendment:* The purpose of this amendment is to correct a clerical error.

**Miscellaneous Conforming Revisions**

237. *Amendment:* The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 3 by deleting "at Sentencing)" and inserting in lieu thereof "in Imposing Sentence)".

The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 4 by deleting "(Assault)" and inserting in lieu thereof "(Aggravated Assault)".

The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 5 by deleting "§ 2K2.3" and inserting in lieu thereof "§ 2K2.2", by deleting "12" and inserting in lieu thereof "16", and by deleting "abusive contact was accomplished as defined in 18 U.S.C. 2242, increase by 4 levels" and inserting in lieu thereof "offense was committed by the means set forth in 18 U.S.C. 2242".

The Commentary to § 1B1.4 captioned "Background" is amended by deleting "3557" and inserting in lieu thereof "3577".

The Commentary to § 2A5.2 captioned "Background" is amended by inserting "or Aboard" immediately following "Materials While Boarding".

The Introductory Commentary to Chapter 2, Part B is amended by deleting "Order and".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 2 by deleting "(Attempt, Solicitation, or Conspiracy Not Covered by a Specific Guideline)" and inserting in lieu thereof "(Attempt, Solicitation, or Conspiracy)".

The Commentary to § 2R1.1 captioned "Application Notes" is amended in Note 7 by inserting "Category" immediately following "Criminal History".

The Commentary to § 2T1.4 captioned "Application Notes" is amended in Note 3 by inserting "Use of" immediately before "Special Skill".

The Commentary to § 3B1.4 is amended by deleting "(Role in the Offense)" the first time it appears and inserting in lieu thereof "(Aggravating Role)", and by deleting "(Role in the Offense)" the second time it appears and inserting in lieu thereof "(Mitigating Role)".

The Commentary to § 3D1.2 captioned "Application Notes" is amended in Note 1 by deleting "25 (18+1+6) rather than 28" and inserting in lieu thereof "28 (18+4+6) rather than 31".

The Commentary to § 3D1.3 captioned "Application Notes" is amended in the last sentence of Note 4 by deleting "Loss or Damage" and inserting in lieu thereof "Damage or Loss".

The Commentary following § 3D1.5 captioned "Illustrations of the Operation of the Multiple-Count Rules" is amended in example 1 by deleting "19" and inserting in lieu thereof "22", by deleting "1-Level" and inserting in lieu thereof "4-Level", by deleting "25." and inserting in lieu thereof "28.", by deleting "(25)" and inserting in lieu thereof "(28)", and by deleting "28" and inserting in lieu thereof "31".

The Commentary following § 3D1.5 captioned "Illustrations of the Operation of the Multiple-Count Rules" is amended in the last 2 sentences of example 3 by deleting "10" wherever it appears and inserting in lieu thereof in each instance "8".

The Commentary following § 3D1.5 captioned "Illustrations of the Operation of the Multiple-Count Rules" is amended in example 5 by deleting "13" wherever it appears and inserting in lieu thereof "14".

The Commentary following § 3D1.5 captioned "Illustrations of the Operation of the Multiple-Count Rules" is amended by deleting Illustration 2 and renumbering Illustrations 3, 4, and 5 as 2, 3, and 4, respectively.

*Reason for Amendment:* The purpose of this amendment is to conform cross-references and illustrations of the operation of the guidelines to the guidelines, as amended.

[FR Doc. 89-11549 Filed 5-16-89; 8:45 am]

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federal register

Wednesday
May 17, 1989

Part III

# Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 570

Urban Development Action Grants (UGAD) Program; Changes to Project Selection System; Interim Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Secretary**

**24 CFR Part 570**

**[Docket No. R-89-1440; FR-2647]**
**RIN 2501-AA83**

## Urban Development Action Grants (UDAG) Program; Changes to Project Selection System

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

**ACTION:** Interim rule.

**SUMMARY:** This rule will amend 24 CFR 570.459 to change the Urban Development Action Grants (UDAG) project selection system. The changes reflect the Secretary's priorities to address critical needs for housing and economic development.

**DATE:** Effective date: June 30, 1989. Comments due June 16, 1989.

**ADDRESS:** Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address. As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 755-2575. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 755-7084).

**FOR FURTHER INFORMATION CONTACT:** Stanley Newman, Director, Office of Urban Development Action Grants, Room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 755-6290. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.** Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in this document under the heading, *Other Matters.* Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

### Changes to Selection System

The Urban Development Action Grant (UDAG) program is authorized by section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. 5318). On August 29, 1988 (53 FR 33026), HUD published a final rule implementing amendments to section 119 contained in section 515 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) and in the HUD-Independent Agencies Appropriations Act, 1988 (Pub. L. 100-202, approved December 22, 1987). The rule amended the UDAG regulations (24 CFR Part 570) by modifying the project selection criteria for UDAG funds and the definition of eligible cities. The new selection system was expected to spread UDAG funds to more areas of the country. The rule became effective October 6, 1988.

Congress has not authorized any appropriation for the UDAG program for FY 1989. However, funds recaptured from previous years will be used to fund the two remaining funding rounds: July 1989 for small cities, with applications due by May 31, 1989, and September 1989 for large cities and urban counties, with applications due by July 31, 1989. A Notice of the UDAG funding rounds for FY 1989 was published on November 2, 1988 (53 FR 44186). It is estimated that approximately $50 million will be available for these two funding rounds. (The changes to the selection system described in this rule will not affect the funding round for small cities.)

This interim rule amends the UDAG project selection system described in 24 CFR 570.459 to: (1) Reduce the number of points that may be awarded under three selection criteria; (2) add two new criteria; and (3) adjust two existing criteria. The changes reflect the Secretary's priorities to address critical needs for housing and economic development.

The rule makes the following changes with respect to point reduction:

1. *Leveraging ratio*—Reduces the maximum point value from 10 points to 8 points. While the leveraging ratio of private funds to UDAG funds is a key factor in the UDAG program, HUD believes that 8 points will give sufficient emphasis since this selection criterion still retains the highest number of points of all the criteria.

2. *UDAG funds per new permanent job*—Reduces the maximum point value from 7 points to 6 points. This reduction will not have a significant effect on this selection criterion. The creation or retention of jobs is clearly a main focus of the UDAG program, as reflected by the existence of several other selection criteria related to jobs and their associated points.

3. *State/local funds per UDAG dollar*—Reduces the maximum point value from 2 points to 1 point. Other State/local criteria are added to strengthen the targeting of State/local funding.

The three changes described above will make available four rating points that are used to add two new criteria and to adjust two existing criteria. The following criteria are added:

1. *Tax incentives for development or rehabilitation of housing for low- and moderate-income persons*—1 point. Projects that use State/local tax incentives to promote the development or rehabilitation of housing for low- and moderate-income persons by the private sector may receive one point. This criterion is directly related to the statutory criterion in section 119(d)(1)(C)(vii) concerning the extent to which State or local government special economic incentives have been committed.

2. *State/local funds for homeownership*—1 point. Projects that commit State/local funds to homeownership for first-time buyers may receive one point. This criterion also relates to the statutory criterion in section 119(d)(1)(C)(vii) regarding the extent to which State or local funding has been committed to the project. Attention to this factor in the rating

process recognizes the pressing need for action to assist first-time home buyers by making housing more affordable.

The following adjustments are made in existing criteria:

1. *State-designated enterprise zones.* The existing UDAG selection system awards one point for projects that are located within a Federal Enterprise Zone § 570.459(e)(11), designated in accordance with Title VII of the Housing and Community Development Act of 1987. This interim rule will add to this criterion enterprise zones designated in accordance with a State law, State executive order, or State plan that recognizes distressed areas and encourages or offers incentives for private investment that will create jobs and assist in the economic revitalization of the areas. The point value for this criterion is increased to two. This relates directly to the statutory criterion in section 119(d)(1)(C)(vii) regarding the extent to which State/local funding or special economic incentives have been committed to the project.

This adjustment to the existing criterion gives State-designated enterprise zones the recognition and support that they deserve. Enterprise zones encourage entrepreneurship and job creation in distressed areas, a major goal of any economic development effort. Therefore, projects located in Federal (if applicable) or in State-designated enterprise zones may receive two points in the project selection system.

2. *Sheltering the homeless.* There is clear national concern about the problem of the homeless, which requires a mobilization of Federal, State, local, and private sector resources to address this crucial issue. This rule will change the selection system to award an additional point under the existing criterion "Pressing residential need" (§ 570.459(e)(8)) for projects that provide direct assistance for sheltering the homeless. (This criterion relates to the statutory criterion in section 119(d)(1)(C)(v) concerning pressing residential need.) To be eligible for this additional point, applications must meet the statutory standard in § 570.459(e)(8)(ii) (A) and (B), as well as demonstrate that the project will also provide direct assistance for sheltering the homeless.

The Department will apply the additional criteria described in this rule to the Large Cities and Urban Counties funding round for the UDAG program, for which applications are to be received during July and funding decisions made in September 1989. The Secretary has determined that the concerns of providing affordable housing for low and moderate income families, sheltering the homeless, and encouraging economic development in areas that are recognized as economically distressed are sufficiently critical to make these changes to the rule effective for the last funding round in this fiscal year. The change is a limited one, and its effects on the program are easily understood. Accordingly, the Department has determined that good cause exists for making the changes by interim rule. The public is invited to comment on the changes, and the comments will be considered in promulgating a final rule before any subsequent funding rounds.

**Other Matters**

The collection of information requirements for the UDAG program have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on the burden hours for these requirements is provided as follows:

| Burden | Number of responses | Responses per respondent | Hours per response | Annual total |
|---|---|---|---|---|
| Application | 200 | 1.3 | 32.2 | 8,372 |

The collection of information requirements contained in this rule comprise 52 hours of the annual total of 8,372 burden hours.

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

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities because the number of affected small entities is not substantial. The funding for the UDAG program is not a substantial amount and the effect of the changes will be neutral on the competitive position of small entities.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. The rule amends the UDAG selection criteria—a change that has neither substantial nor direct effects on cities and urban counties in their role as governmental entities.

The General Counsel, as the Designated Official under Executive Order 12606, *Family*, has determined that this rule may have a potential significant impact on family formation, maintenance, and general well-being, to the extent that UDAG funds are targeted for projects that promote economic development, the creation and retention of jobs, and affordable housing, all of which in turn promote the maintenance and well-being of families. Any family impact will be positive.

The Catalog of Federal Domestic Assistance number is 14.221—Urban Development Action Grants.

This rule was not listed in the Departments semi-annual agenda published on April 24, 1989 (54 FR 16708).

**List of Subjects in 24 CFR Part 570**

Community development block grants, Grant programs: Housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, the Department amends 24 CFR Part 570 as follows:

## PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR Part 570 continues to read as follows:

**Authority:** Title 1, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 570.459 is amended by revising paragraphs (e)(1), (e)(3), and the introductory text of (e)(8); adding a flush paragraph after (e)(8)(ii)(B); revising (e)(10) and (e)(11); by adding paragraphs (e)(12) and (e)(13); and by revising the UDAG Project Selection System chart

appearing at the end of the section, to read as follows:

**§ 570.459 Criteria for selection.**

* * * * *

(e) * * *

(1) *Leveraging ratio* (8 points). The extent to which the grant will stimulate economic recovery by leveraging private investment;

(2) * * *

(3) *UDAG funds per new permanent job* (6 points). The amount of action grant funds requested in relationship to the number of new permanent jobs;

* * * * *

(8) *Pressing residential need* (2 points). HUD will award 1 point after assessing whether the project will relieve a pressing housing need for low and moderate income persons in the jurisdiction by using the factors described in paragraphs (e)(8) (i) and (ii) of this section:

(ii) * * *

(B) * * *

An additional 1 point will be awarded under this criterion to applications that demonstrate, in addition to the proposals in paragraphs (e)(8)(ii) (A) and (B) of this section, that the project will provide direct assistance for sheltering the homeless.

* * * * *

(10) *State/local funds per UDAG dollar* (1 point). The extent of assistance to be made available by State/local funds in relation to the amount of UDAG funds;

(11) *Federal or State-designated enterprise zone* (2 points). The project demonstrates special State/local economic incentives by being located within an enterprise zone designated in accordance with Title VII of the Housing and Community Development Act of 1987 or within a State-designated enterprise zone.

(12) *Tax incentives for development or rehabilitation of housing for low- and moderate income persons* (1 point). The project uses State/local tax incentives to promote the development or rehabilitation of housing for low- and moderate–income persons by the private sector.

(13) *State/local funds for homeownership* (1 point). The project demonstrates the commitment of State/local funds to assist homeownership for first–time home buyers.

* * * * *

UDAG PROJECT SELECTION SYSTEM

| Selection criteria for large cities, urban counties, and small cities | Factors | Maximum points |
|---|---|---|
| A. Impaction | | 35 |
| | Pre–1940 Housing (17). | |
| | Extent of Poverty (11). | |
| | Population Growth Rate (7). | |
| B. Distress | | 35 |
| **Large Cities and Urban Counties** | **Small Cities** | |
| Per Capita Income Change (15). | Per Capita Income Change (18). | |
| Unemployment Rate (15). | LSA Unemployment Rate (17). | |
| Job Lag (5) | | |
| C. Other Criteria | | 83 |
| | 1. Leveraging Ratio (8). | |
| | 2. New Permanent Jobs (3). | |
| | 3. UDAG Funds per New Permanent Job (6). | |
| | 4. Percent New Low/Moderate Income Jobs (2). | |
| | 5. Percent New Minority Jobs (2). | |
| | 6. Retained Jobs (2). | |
| | 7. Pressing Employment Need (1). | |
| | 8. Pressing Residential Need and Sheltering the Homeless (2). | |
| | 9. Tax Benefits per UDAG $ (2). | |
| | 10. State/Local Funds per UDAG $ (1). | |
| | 11. Federal or State–Designated Enterprise Zone (2 points). | |
| | 12. Tax Incentives for Development or Rehabilitation of Housing for Low and Moderate Income Persons (1). | |
| | 13. State/Local Funds for Homeownership (1). | |
| D. Bonus Points | | 2 |
| | 1. Applicant has not received a preliminary UDAG approval for one year (1) or. | |
| | 2. Applicant has not received a preliminary UDAG approval for two years (2). | |
| Total Possible Points. | | 105 |

Date: April 28, 1989.

**Jack Kemp,**

*Secretary.*

[FR Doc. 89–11736 Filed 5–16–89; 8:45 am]

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federal register

Wednesday
May 17, 1989

Part IV

# Department of Justice

Bureau of Prisons

28 CFR Part 552

Control, Custody, Care, Treatment and Instruction of Inmates; Use of Force and Application of Restraints on Inmates; Interim Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 552

## Control, Custody, Care, Treatment and Instruction of Inmates; Use of Force and Application of Restraints on Inmates

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Interim Rule.

**SUMMARY:** In this document, the Bureau of Prisons is publishing amendments to its rule on use of force and application of restraints on inmates. The amendments are intended to clarify the existing rule, to provide greater specificity, and to address concerns which have arisen since the rule was published in 1982.

**DATES:** Effective Date: June 16, 1989. Public comments on the interim rule must be received on or before June 30, 1989.

**ADDRESS:** Office of General Counsel, Bureau of Prisons, Room 767, 320 First Street NW., Washington, DC 20534. Comments received by the closing date will be available for examination by interested persons at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is amending its final rule on use of force and application of restraints on inmates. A final rule on this subject was published in the **Federal Register** June 23, 1982 (at 47 FR 27220 et seq.). After careful review, the Bureau has determined it necessary to clarify and to provide greater specificity to the existing rule and to provide more comprehensive guidelines for use by staff when faced with potential use of force or application of restraint situations. The current amendment incorporates several new sections intended to more effectively implement the requirements of the rule. The Bureau is placing into the rule "confrontation avoidance procedures" in an to attempt to obtain an inmate's voluntary cooperation before using force, and the "use of force team technique", intended to gain control of an inmate with minimum risk of injury to the inmate or staff.

Since the present amendments do not pose any new restrictions on inmates and are primarily intended to clarify, and to add specificity to, the scope or intent of the existing rule, the Bureau finds good cause under 5 U.S.C. 553, to make this amendment effective without notice of proposed rulemaking or opportunity for public comment. The 30-day interval prior to the rule's effective date will be used by the Bureau of Prisons for dissemination of the new procedures and for applicable staff training. The Bureau also has decided to publish this amendment as an interim rule to determine if any further revision or clarification will be required. Public comment received on or before the closing date will be considered prior to the publication of the final rule.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to his rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

### Summary of Changes

1. Section 522.20—Numerous changes are made to § 552.20, which now include § 552.20 (a) through (e). While the intent of prior § 552.20 remains basically the same, we believe that the additional information more effectively describes the overall purpose and scope of this rule. For example, new § 552.20(a) specifically states that the Bureau authorizes only that amount of force necessary to gain control of the inmate, to ensure institution security and good order, to protect and ensure the safety of inmates, staff, and others, and to prevent serious property damage. The second sentence in § 552.20(a) revises the language in existing § 552.21(a), although the basic intent is unchanged. The phrase, "correctional supervisor in charge of the shift" is replaced with the term "staff". This change is made because the situation may exist where the correctional supervisor in charge may not be available, or time may not permit such an authorization. The examples now include destroying property located on government land. The last sentence in § 552.20 incorporates the language in existing § 552.20 and adds, as another example, "escorting an inmate to a Special Housing Unit pending investigation, etc."

New § 552.20(b), provides that staff may immediately use force and/or apply restraints when the behavior of an inmate is deemed to constitute an immediate, serious threat to the inmate, staff, others, property, or to institution security and good order. In this situation, staff may respond without the presence or direction of a supervisor. Section 552.20(c) is new and discusses calculated use of force and/or application of restraint situations. Where an inmate is in an area that can be isolated, and where there is no immediate or direct threat to the inmate or others, staff are now required to first determine whether the situation can be resolved without resorting to force (Section 552.22, "Confrontation Avoidance Procedures", is referenced and will be discussed later in this document). Section 552.20(d) is new and states, if force is deemed necessary, and other means of gaining control of an inmate are deemed inappropriate or ineffective, then the "Use of Force Team Technique" will be used by staff to control the inmate and to apply restraints. The Use of Force Team Technique ordinarily involves trained staff, clothed in protective gear, who enter the inmate's area in tandem, each with a coordinated responsibility for helping achieve immediate control of the inmate. While the technique is new to the rule, it has been a long-standing practice at Bureau institutions and has resulted in reduced risk of injury to both inmates and staff. Section 552.20(e) is new and directs that staff may not deviate from the provisions of this rule except where the facts and circumstances known to the staff member would warrant a person with correctional experience to reasonably believe other action is necessary as a "last resort" to prevent serious physical injury, or serious property damage which would immediately endanger the safety of staff, inmates, or others. Implementing language states that all instances of use of force will be documented and carefully reviewed, to determine if the actions taken were reasonable and appropriate.

2. Section 552.21, previously titled "Use of Restraints", is now titled, "Principles Governing the Use of Force and Application of Restraints". Section 552.21 (a) and (b) are new. Both sections place into rule language the Bureau's requirement that staff shall first attempt to gain an inmate's voluntary cooperation before using force and that force may not be used to punish an inmate. Section 552.21(c) re-emphasizes the requirement that only that amount of force necessary to gain control of the inmate may be used by staff, and provides examples where an appropriate amount of force may be warranted. Section 552.21(d) restates the basic intent of the second and third sentences in existing § 552.21(b). The first sentence in § 552.21(d) incorporates the language in existing § 552.21(b) and

substitutes the phrase, "the destruction of government property" with the phrase, "serious property damage." This change in wording is made to include all property. The second sentence in § 552.21(d) incorporates the language in existing § 552.21(b) and adds the phrase, "and after staff have gained control of the inmate" to indicate when the Warden is to be notified. The first sentence of new § 552.21(e) replaces the language found in the second sentence of existing § 552.22, and provides staff with the discretion to apply restraints, and adds the phrase, "and may apply restraints to any inmate who is placed under control by the Use of Force Team Technique." The second sentence in § 552.21(e) revises the language found in the third sentence of existing § 552.22. While the wording has changed, the intent remains the same. Section 552.21(f) is new to the rule language and states the Bureau's long-standing requirement that restraints should remain on the inmate until self-control is regained. New § 552.21(g) restates the language contained in the first sentence of existing § 552.21(b). New § 552.21(h) directs that staff may not use restraint equipment or devices as a method of punishment; about an inmate's neck or face, or in any manner which restricts blood circulation or breathing; in a manner that causes unnecessary physical pain or extreme discomfort; or to secure an inmate to a fixed object, such as a cell door or grill, except as provided in § 552.23 (Section 552.23, Use of Four-Point Restraints, will be discussed later in this document). Section 552.21(i) is new to the rule language and states the Bureau's long-standing prohibition against the use of medication as a restraint solely for security purposes. New § 552.21(j) emphasizes the Bureau's intent to document all significant incidents involving use of force and the application of restraints. This includes, whenever practicable, filming the incident and having it reviewed by key administrators of the institution, with continued review by Regional and Central Office staff. A similar emphasis on documentation is included in new § 552.26, which expands the language of existing § 552.24.

3. Section 552.22, formerly titled "Use of Force" is now titled, "Confrontation Avoidance Procedures". While this entire section is new to the rule, it has been a long-standing practice at Bureau institutions to attempt to obtain an inmate's voluntary cooperation before using force. Section 552.22(a) directs the ranking custodial official (ordinarily the captain or shift lieutenant), a designated mental health professional, and others, to confer and gather pertinent information about the inmate and the immediate situation, prior to any calculated use of force. Based on their assessment of the information received, and using the knowledge gained about the inmate and the incident, they will identify a staff member(s) (someone who may have rapport with the inmate or who is likely to be successful in attempting to reason with the inmate) to attempt to obtain the inmate's voluntary cooperation. Section 552.22(b) (1) and (2) directs that confrontation avoidance procedures are not required if the inmate involved has a record of being unresponsive to confrontation avoidance measures (repeated recalcitrant behavior) or if the institution or special housing unit within an institution has been excluded from this requirement by the Director of the Bureau of Prisons. These procedures are consistent with the Bureau's intent to resolve situations, where practicable, in a non-confrontational manner.

4. Section 552.23, formerly titled "Use of Chemical Agents", is now titled, "Use of Four-Point Restraints". This section discusses the use of four-point restraints for an inmate who needs to be restrained within a cell, after considering lesser alternatives such as handcuffs alone, or attached to a waist chain. As stated in § 552.23(a), soft restraints (e.g., leather) must be used to restrain an inmate unless with respect to that inmate, such restraints previously have proven ineffective or have proven ineffective during initial application. While the term "four-point restraint" is new to the rule, the practice of restraining an inmate in medically acceptable restraints (ordinarily leather) is described in existing § 552.21(e) and in the implementing language that follows. New § 552.23(b) directs that inmates in four-point restraints be dressed in clothing appropriate to the temperature. Section 552.23(c) requires that the bed used in four-point restraint situations be covered with a mattress, and that a blanket/sheet be provided to the inmate. The third and fourth sentences in existing § 552.21(e) becomes new § 552.23(d). Section 552.23(e) is new and directs staff to review the inmate's placement in four-point restraints every two hours to determine if the use of restraints has had the required calming effect. This is accomplished so that the inmate can be released from these restraints (completely or to lesser restraints) as soon as possible. At every two-hour review, the inmate will be afforded the opportunity to use the toilet, unless the inmate is continuing to actively resist or becomes violent while being released from the restraints for this purpose. Section 552.23(f) is new to the rule, and requires that medical personnel initially examine the application of four-point restraints to ensure appropriate breathing and response. Staff are also to ensure that circulation has not been restricted or impaired. Restrained inmates are to be checked by medical personnel ordinarily at least twice during each 8-hour shift. Use of four-point restraints beyond eight hours requires the supervision of medical personnel. Mental health and medical personnel may be asked for advice regarding the appropriate time for removal of the restraints. Section 552.23(g) places into rule language the Bureau's existing requirement that the Regional Director or Regional Duty Officer be contacted when it is necessary to restrain an inmate longer than 8 hours.

5. Section 552.24, formally titled "Documentation", is now titled, "Use of Chemical Agents or Non-Lethal Weapons". Existing § 552.23 becomes new § 552.24. This section now recognizes that non-lethal weapons may be used in the specified situations. The wording in existing § 552.23(c) is changed in new § 552.24(c) by substituting the phrase "serious property damage" for "major property damage". This change is made to keep consistent the language and intent of § 552.20(a).

6. Section 552.25, "Medical Attention in Use of Force and Application of Restraints Incidents", is added to the rule to direct staff to summon mental health or medical staff assistance at the earliest possible time. Section 552.25(a) now includes language contained in existing § 552.21 (c) and (d). Section 552.25(b) requires that an inmate be examined, and treated where appropriate, by a member of the medical staff after any use of force or forcible applicable of restraints.

7. Section 552.26, "Documentation of Use of Force and Application of Restraints Incidents", expands existing § 552.24. The new sections provide that staff document in writing all incidents involving the use of force, chemical agents or non-lethal weapons. Staff shall also document in writing the use of restraints on an inmate who becomes violent or displays signs of imminent violence. The requirement in existing § 552.24 for a copy of the report to be placed in the inmate's central file is now contained in § 552.26. Implementing instructions require that once control of the situation is obtained, staff are to record information about injuries, a

description of the circumstances that gave rise to the need for immediate use of force, and the identification of the inmates and staff members involved.

**Conclusion**

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), 28 CFR Chapter V, Subchapter C, Part 552, is amended as set forth below.

Dated: April 26, 1989.

**J. Michael Quinlan,**

*Director, Bureau of Prisons.*

**SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

## PART 552—CUSTODY

1. The authority citation for Part 552 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed as to offenses occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Part 552, Subpart C, is revised to read as follows:

**Subpart C—Use of Force and Application of Restraints on Inmates**

Sec.



## Subpart C—Use of Force and Application of Restraints on Inmates

### § 552.20 Purpose and scope.

(a) The Bureau of Prisons authorizes staff to use only that amount of force necessary to gain control of the inmate, to protect and ensure the safety of inmates, staff, and others, to prevent serious property damage, and to ensure institution security and good order. Staff are authorized to apply physical restraints necessary to gain control of an inmate who appears to be dangerous because:

(1) The inmate assaults any person;

(2) The inmate destroys government property or property located on government land;

(3) The inmate attempts sucide;

(4) The inmate inflicts wounds upon self; or

(5) The inmate becomes violent or displays signs of imminent violence.

This rule on application of restraints does not restrict the use of restraints in situations requiring precautionary restraints, particularly in the movement or transfer of inmates (e.g., the use of handcuffs in moving inmates to and from a cell in detention, escorting an inmate to a Special Housing Unit pending investigation, etc.).

(b) *Immediate use of force.* Staff may immediately use force and/or apply restraints when the behavior described in paragraph (a) of this section constitutes an immediate, serious threat to the inmate, staff, others, property, or to institution security and good order.

(c) *Calculated use of force and/or application of restraints.* This occurs in situations where an inmate is in an area that can be isolated (e.g., a locked cell, a range) and where there is no immediate, direct threat to the inmate or others. When there is time for the calculated use of force or application of restraints, staff must first determine if the situation can be resolved without resorting to force (see § 552.22).

(d) If use of force is determined to be necessary, and other means of gaining control of an inmate are deemed inappropriate or ineffective, then the Use of Force Team Technique shall be used to control the inmate and to apply restraints. The Use of Force Team Tehnique ordinarily involves trained staff, clothed in protective gear, who enter the inmate's area in tandem, each with a coordinated responsibility for helping achieve immediate control of the inmate.

(e) Any exception to procedures outlined in this rule is prohibited, except where the facts and circumstances known to the staff member would warrant a person with correctional experience to reasonably believe other action is necessary (as a last resort) to prevent serious physical injury, or serious property damage which would immediately endanger the safety of staff, inmates, or others.

### § 552.21 Principles govering the use of force and application of restraints.

(a) Except as provided § 552.22(b), staff ordinarily shall first attempt to gain the inmate's voluntary cooperation before using force.

(b) Force may not be used to punish an inmate.

(c) Staff shall use only that amount of force necessary to gain control of the inmate. Situations where an appropriate amount of force may be warranted include, but are not limited to: defense or protection of self or others; enforcement of institutional regulations; and the prevention of a crime or apprehension of one who has committed a crime.

(d) Where immediate use of restraints is indicated, staff may temporarily apply such restraints to an inmate to prevent that inmate from hurting self, staff, or others, and/or to prevent serious property damage. When the temporary application of restraints is determined necessary, and after staff have gained control of the inmate, the Warden or designee is to be notified immediately for a decision on whether the use of restraints should continue.

(e) Staff may apply restraints (for example, handcuffs) to the inmate who continues to resist after staff achieve physical control of that inmate, and may apply restraints to any inmate who is placed under control by the Use of Force Team Technique. If an inmate in a forcible restraint situation refuses to move to another area on his own, staff may physically move that inmate by lifting and carrying the inmate to the appropriate destination.

(f) Restraints should remain on the inmate until self-control is regained.

(g) Except where the immediate use of restraints is required for control of the inmate, staff may apply restraints to, or continue the use of restraints on, an inmate while in a cell in administrative detention or disciplinary segregation only with approval of the Warden or designee.

(h) Restraint equipment or devices may not be used in any of the following ways:

(1) As a method of punishing an inmate.

(2) About an inmate's neck or face, or in any manner which restricts blood circulation or breathing.

(3) In a manner that causes unnecessary physical pain or extreme discomfort.

(4) To secure an inmate to a fixed object, such as a cell door or cell grill, except as provided in § 552.23.

(i) Medication may not be used as a restraint solely for security purposes.

(j) All significant incidents involving the use of force and the application of restraints must be carefully documented.

### § 552.22 Confrontation avoidance procedures.

(a) Except as provided in paragraph (b) of this section, prior to any calculated use of force, the ranking custodial official (ordinarily the captain or shift lieutenant), a designated mental health professional, and others shall confer and gather pertinent information about the inmate and the immediate situation. Based on their assessment of that information, they shall identify a

staff member(s) to attempt to obtain the inmate's voluntary cooperation and, using the knowledge they have gained about the inmate and the incident, determine if use of force is necessary.

(b) This procedure would not be required if:

(1) The inmate involved has a record of being unresponsive to confrontation avoidance measures;

(2) The Director has excluded the institution or a special housing unit within an institution from this requirement.

**§ 552.23 Use of four-point restraints.**

When it is necessary to restrain an inmate within a cell, and after consideration of lesser alternatives (such as handcuffs alone, or attached to a waist chain), it is determined that four-point restraints are the only means available to obtain and maintain control over an inmate, the following procedures must be observed.

(a) Soft restraints, (e.g., leather) must be used to restrain an inmate, unless with respect to that inmate, such restraints previously have proven ineffective, or prove ineffective during the initial application procedure.

(b) Inmates will be dressed in clothing appropriate to the temperature.

(c) Beds will be covered with a mattress, and a blanket/sheet will be provided to the inmate.

(d) Staff shall check the inmate at least every thirty minutes, both to ensure that the restraints are not hampering circulation and for the general welfare of the inmate. When an inmate is restrained to a bed, staff shall periodically rotate the inmate's position to avoid soreness or stiffness.

(e) A review of the inmate's placement in four-point restraints shall be made every two hours to determine if the use of restraints has had the required calming effect so as to release the inmate from these restraints (completely or to lesser restraints) as soon as possible. At every two-hour review, the inmate will be afforded the opportunity to use the toilet, unless the inmate is continuing to actively resist or becomes violent while being released from the restraints for this purpose.

(f) When the inmate is placed in four-point restraints, medical personnel shall initially assess the inmate to ensure appropraite breathing and response (physical or verbal). Staff shall also ensure that the inmate's circulation has not been restricted or impaired by the restraints. When inmates are so restrained, medical personnel ordinarily are to visit the inmate at least twice during each eight-hour shift. Use of four-point restraints beyond eight hours requires the supervision of medical personnel. Mental health and medical personnel may be asked for advice regarding the appropriate time for removal of the restraints.

(g) When it is necessary to restrain an inmate for longer than 8 hours, the Regional Director or Regional Duty Officer is to be notified telephonically by the Warden or designee or institution administrative duty officer.

**§ 552.24 Use of chemical agents or non-lethal weapons.**

The Warden may authorize the use of chemical agents or non-lethal weapons only when the situation is such that the:

(a) Inmate is armed and/or barricaded; or

(b) Cannot be approached without danger to self or others; and

(c) It is determined that a delay in bringing the situation under control would constitute a serious hazard to the inmate or others, or would result in a major disturbance or serious property damage.

**§ 552.25 Medical attention in use of force and application of restraints incidents.**

(a) Staff shall seek the assistance of mental health or medical staff upon gaining physical control of the inmate. When practicable, staff shall seek such assistance at the onset of the violent behavior. When mental health or medical staff determine that an inmate requires continuing care, the deciding staff shall assume responsibility for care of the inmate, to include possible admission to the institution hospital.

(b) After any use of force or forcible application of restraints, the inmate shall be examined by a member of the medical staff, and any injuries noted immediately treated.

**§ 552.26 Documentation of use of force and application of restraints incidents.**

Staff shall document in writing all incidents involving the use of force, use of chemical agents or non-lethal weapons. Staff shall also document in writing the use of restraints on an inmate who becomes violent or displays signs of imminent violence. A copy of the report shall be placed in the inmate's central file.

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## LIST OF PUBLIC LAWS

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**H.R. 678/Pub. L. 101–26**

To make a correction in the Education and Training for a Competitive America Act. (May 11, 1989; 103 Stat. 54; 2 pages) Price: $1.00

**S.J. Res. 62/Pub. L. 101–27**

Designating May 1989 as "National Stroke Awareness Month". (May 11, 1989; 103 Stat. 56; 1 page) Price: $1.00

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