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Presidential Documents

Title 3—

The President

Executive Order 12686 of August 4, 1989

President's Commission on Aviation Security and Terrorism

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish a Commission on Aviation Security and Terrorism, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the President's Commission on Aviation Security and Terrorism to review and evaluate policy options in connection with aviation security, with particular reference to the destruction on December 21, 1988, of Pan American World Airways Flight 103. The Commission shall consist of seven members appointed by the President. Two members shall be Senators, and two shall be Members of the House of Representatives; they shall represent both parties equally. The President shall consult with the Majority and Republican Leaders of the Senate and the Speaker and Minority Leader of the House of Representatives in making appointments from the Senate and House of Representatives, respectively.

(b) The President shall designate a Chairman from among the members of the Commission.

Sec. 2. *Functions.* (a) The Commission shall conduct a comprehensive study and appraisal of practices and policy options with respect to preventing terrorist acts involving aviation. In conducting this effort, the Commission shall evaluate the adequacy of existing procedures for aviation security, compliance therewith, and enforcement thereof. The Commission also shall review options for handling terrorist threats, including prior notification to the public. Further, the Commission shall investigate practices, policies, and laws with respect to the treatment of families of victims of terrorist acts.

(b) Within 6 months of the date of this order, the Commission shall submit a report to the President, which shall be classified if necessary, containing findings and recommendations. If the Commission's report is classified, an unclassified version shall be prepared for public distribution.

Sec. 3. *Administration.* (a) To the extent permitted by law and fully protecting intelligence sources and methods and the ongoing investigations into the destruction of Pan American World Airways Flight 103 of December 21, 1988, the heads of executive departments, agencies, and independent instrumentalities shall provide the Commission, upon request, with such information as it may require for purposes of carrying out its functions.

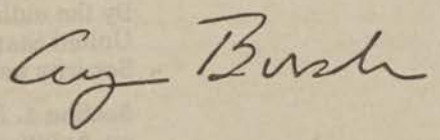
(b) Members of the Commission appointed from among private citizens may receive compensation for their work on the Commission at the daily rate specified for GS–18 of the General Schedule. While engaged in the work of the Commission, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(c) To the extent permitted by law and subject to the availability of appropriations, the Department of Transportation shall, among other Administrative functions, provide the Commission with administrative services, funds, facilities, staff, and other support services necessary for the performance of its functions, and the Secretary of Transportation shall perform the functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), except that of reporting to the Congress, in accordance with the

guidelines and procedures established by the Administrator of General Services.

(d) The Commission shall adhere to the requirements set forth in the Federal Advisory Committee Act, as amended. All executive branch officials assigned duties by the Federal Advisory Committee Act shall comply with its requirements with respect to this Commission.

Sec. 4. *General Provision.* The Commission shall terminate 30 days after submitting its report to the President.



THE WHITE HOUSE,
August 4, 1989.

[FR Doc. 89-18760
Filed 8-7-89; 2:50 pm]
Billing code 3195-01-M

Editorial note: For a White House statement, dated Aug. 4, on the establishment of the Commission, see the *Weekly Compilation of Presidential Documents* (vol. 25, no. 31).

Rules and Regulations

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

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Use of Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances; Ranges of Comparability for Dishwashers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its appliance labeling rule by revising the ranges of comparability used on required labels for dishwashers.

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 mode. This notice publishes the new range figures, which, under §§ 305.10, 305.11 and 305.14 of the rule, must be used on labels on dishwashers manufactured on and after November 7, 1989, and in advertising of dishwashers beginning November 7, 1989. Properly labeled dishwashers manufactured prior to the effective date need not be relabeled. Catalogs printed prior to the effective date in accordance with 16 CFR 305.14 need not be revised.

EFFECTIVE DATE: November 7, 1989.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] required 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. Dishwashers 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 dishwashers. 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 dishwasher is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then on each page of the catalog that lists the product shall be included the range of estimated annual energy costs for 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] The data submitted by manufacturers are based, in part, on the representative average unit cost of the type of energy used to run the appliances tested. According to section 305.9 of the rule, these average energy costs, which are provided by DOE, will be periodically revised by the Commission, but not more often than annually. 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 § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%.

The new figures for the estimated annual costs of operation for dishwashers, which were calculated using the 1989 representative average energy costs published by DOE on December 7, 1988,[4] have been submitted and have been analyzed by the Commission. New ranges based upon them are herewith published.

In consideration of the foregoing, the Commission amends Appendix C of its Appliance Labeling Rule by publishing the following ranges of comparability for use in the labeling and advertising of dishwashers beginning November 7, 1989.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. 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.

Appendix C to Part 305 [Amended]

2. In Appendix C, paragraph 1 and the introductory test in paragraph 2 are revised to read as follows:

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

[2] 44 FR 66466, 16 CFR part 305 (Nov. 19, 1979). On December 10, 1987 (52 FR 46888), the Commission amended the Appliance Labeling Rule by extending coverage to include central air conditioners and heat pumps.

[3] Reports for dishwashers are due by June 1.

[4] 53 FR 49349. The cost of electricity was published as 7.70 cents per kilowatt-hour; For natural gas: 55.2 cents for therm; For propane: 77 cents per gallon; For no. 2 heating oil: 78 cents per gallon.

Appendices to Part 305

* * * * *

Appendix C—Dishwashers

1. *Range Information:* "Compact" includes countertop dishwasher models with a capacity of fewer that eight (8) place settings.

"Standard" includes portable or built-in dishwasher models with a capacity of eight (8) or more place settings.

Place settings shall conform to AHAM Specification DE–1 for chinaware, flatware and serving pieces. Load patterns shall conform to the operating normal for the model being tested.

Ranges of comparability	Ranges of estimated yearly energy costs			
	Electrically heated water		Natural gas heated water	
	Low	High	Low	High
Compact	(1)	(1)	(1)	(1)
Standard	$39.00	$78.00	$22.00	$41.00

[1] No data submitted.

2. *Yearly Cost Information:* Estimates on the scales are based on a national average electic rate of 7.70¢ per kilowatt hour, a national average natural gas rate of 55.2¢ per therm, and eight loads of dishes per week.

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 89–18619 Filed 8–8–89; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name for a new animal drug application (NADA) from DuPont Pharmaceuticals, Inc., to Dupont Pharmaceuticals.

EFFECTIVE DATE: August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1415.

SUPPLEMENTARY INFORMATION: The agency has been informed by E.I. DuPont de Nemours & Co., sponsor of NADA 35–825, which provides for use of naloxone hydrochloride injection as a narcotic antagonist in dogs, that it has transferred the ownership of the NADA from its subsidiary, DuPont Pharmaceuticals, Inc., P.O. Box 363, Manati, PR 00701, to DuPont Pharmaceuticals, One Rodney Square, Wilmington, DE 19898.

Accordingly, the agency is amending the lists of sponsors of approved NADA's in 21 CFR 510.600(c) to remove the entries for DuPont Pharmaceuticals, Inc. (the firm no longer sponsors an approved NADA). Additionally, the agency is amending 21 CFR 522.1462(b) to reflect the change of sponsor name.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry "DuPont Pharmaceuticals, Inc." and in paragraph (c)(2) by removing the entry "000590".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 522 continues to read as follows:

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

§ 522.1462 [Amended]

4. Section 522.1462 *Naloxone hydrochloride injection* is amended in paragraph (b) by removing the entry "000590" and adding in its place "000056".

Dated: August 3, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89–18591 Filed 8–8–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Nystatin, Neomycin, Thiostrepton, Triamcinolone Acetonide Ointment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) sponsored by Norden Laboratories, Inc. The NADA provides for the use of a nystatin, neomycin, thiostrepton, triamcinolone acetonide ointment for dogs and cats for the treatment of acute and chronic otitis, interdigital cysts and management of dermatologic disorders, and for dogs for the treatment of anal gland infections.

EFFECTIVE DATE: August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Norden Laboratories, Inc., Lincoln, Nebraska 68501, filed NADA 140–879 which provides for the use of a nystatin, neomycin, thiostrepton, triamcinolone acetonide ointment for the treatment of acute and chronic otitis of varied etiologies, in interdigital cysts in cats and dogs, in anal gland infections in dogs, and for the management of dermatologic disorders characterized by inflammation and dry or exudative dermatitis, particularly those caused, complicated, or threatened by bacterial or candidal (*Candida albicans*) infections. It is also of value in exzematous dermatitis, contact dermatitis, and seborrheic dermatitis, and as an adjunct in the treatment of dermatitis due to parasitic infestation.

The NADA is approved and the regulations are amended to reflect the approval by adding a new sponsor to § 524.1600a in paragraph (b) (21 CFR 524.1600a(b)). The basis of approval is described in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21

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

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

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR Part 524 is amended as follows:

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

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

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

2. Section 524.1600a is amended by revising paragraph (b) to read as follows:

§ 524.1600a Nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment.

* * * * *

(b) *Sponsor.* See Nos. 011519, 025463, 051259, and 053501 in § 510.600(c) of this chapter.

* * * * *

Dated: August 1, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-18590 Filed 8-8-89; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 556 and 558

Animal Drugs, Feeds, and Related Products; Monensin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Products Co. The supplemental application provides for the use of monensin in Type C medicated feed for the prevention of certain forms of coccidiosis in goats. The regulations are also amended to establish a tolerance for monensin residues in edible goat tissues.

EFFECTIVE DATE: August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 95-735 to provide for the use of a 60-gram-per-pound monensin Type A article to make a 20-gram-per-ton Type C medicated feed used for the prevention of coccidiosis caused by *Eimeria crandallis, E. christenseni,* and *E. ninakohlyakimovae* in goats maintained in confinement. The application is approved and 21 CFR 556.420 is amended to establish a tolerance for residues of monensin in the edible tissues of goats. In addition, 21 CFR 558.4 is amended to reflect the exemption from the requirements of a medicated feed application for this use, and 21 CFR 558.355 is amended to reflect approval of the application. The basis for approval is discussed in the freedom of information summary.

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

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

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR Part 556 continues to read as follows:

Authority: Section 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 556.420 is amended by revising paragraph (a) to read as follows:

§ 556.420 Monensin.

(a) *Cattle and goats.* A tolerance of 0.05 part per million is established for negligible residues of monensin in the edible tissues of cattle and goats.

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.4 [Amended]

4. Section 558.4 *Medicated feed applications* is amended in paragraph (d) in the table "Category I" for the entry "Monensin" by revising the entry under the heading "Assay limits percent [1] type B/C [2]" to read "Chickens: 75-125; Cattle: 5-10 g/ton 80-120; Cattle: 10-30 g/ton 85-115; Goats: 20 g/ton 85-115; Liq. feed: 80-120."

5. Section 558.355 is amended by adding new paragraphs (b)(14), (d) (3), (10), and (11), and (f)(6) to read as follows:

§ 558.355 Monensin.

* * * * *

(b) * * *

(14) To 000986: 60 grams per pound, as monensin sodium, paragraph (f)(6) of this section.

* * * * *

(d) * * *

(3) Type C goat feeds shall bear an expiration date of 30 days after date of manufacture.

* * * * *

(10) The labeling of all Type A articles and Type B feeds (liquid and dry) containing monensin intended for use in

goats shall bear, in addition to the caution statement in paragraph (d)(6) of this section, the following caution statements:

(i) Monensin medicated goat feed is safe for use in goats only. Consumption by unapproved species may result in toxic reactions.

(ii) Feeding undiluted or mixing errors resulting in high concentrations of monensin could be fatal to goats.

(iii) Must be thoroughly mixed in feeds before use.

(iv) Do not feed undiluted.

(v) Do not exceed the levels of monensin recommended in the feeding directions, as reduced average daily gains may result.

(11) The labeling of complete feeds containing monensin intended for use in goats shall bear the caution statements specified in paragraphs (d)(6) and (d)(10) (i) and (v) of this section.

* * * * *

(f) * * *

(6) *Goats*—(i) *Amount per ton.* Monensin, 20 grams.

(*a*) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria crandallis, E. christenseni,* and *E. ninakohlyakimovae.*

(*b*) *Limitations.* (*1*) Feed only to goats being fed in confinement. Do not feed to lactating goats. Feed continuously in Type C feed as monensin sodium. Type C feeds may be manufactured from monensin liquid Type B feeds. The liquid Type B feeds have a pH of 4.3 to 7.1 and their labels must bear appropriate mixing directions. Mixing directions for liquid Type B feeds stored in recirculating tank systems are: Recirculate immediately prior to use for no less than 10 minutes, moving not less than 1 percent of the tank contents per minute from the bottom of the tank to the top. Recirculate daily, as directed in this paragraph, even when Type B feed is not used. Mixing directions for liquid Type B feeds stored in mechanical, air, or other agitation-type tank systems are: Agitate immediately prior to use for not less than 10 minutes, creating a turbulence at the bottom of the tank that is visible at the top. Agitate daily, as directed in this paragraph, even when Type B feed is not used. The liquid Type B feed must bear directions to mix thoroughly with grain and/or roughage prior to feeding and must bear caution statement as follows: Inadequate mixing (recirculation or agitation), of liquid Type B feeds has resulted in increased monensin concentration which could be fatal to goats.

(*2*) An approved positionally stable monensin liquid Type B feed will not be subject to the requirements for mixing directions and cautionary labeling prescribed in paragraph (f)(6)(i)(*b*)(*1*) of this section. A manufacturer may secure approval of a positionally stable liquid Type B feed by (*i*) either filing an NADA for the product or by establishing a master file containing data to support the stability of its product; (*ii*) authorizing the agency to reference and rely upon the data in the master file to support approval of a supplemental NADA to establish positional stability; and (*iii*) requesting No. 000986 in § 510.600(c) of this chapter to file a supplemental NADA to provide for the use of its monensin Type A article in the manufacture of the liquid Type B feed specified in the appropriate master file. If the data demonstrate the stability of the liquid Type B feed described in the master file, the agency will approve the supplemental NADA. Approval of the Type B feed need not be published in the **Federal Register** because approval will not affect or alter the content of the regulation. The approval will, however, provide a basis for the individual liquid feed manufacturer to submit, and for the agency to approve, a medicated feed application under section 512(m) of the act for the liquid Type B feed. A manufacturer who seeks to market a positionally unstable monensin liquid Type B feed with mixing directions different from the standard established in paragraph (f)(6)(i)(*b*)(*1*) of this section may also follow this procedure.

(ii) [Reserved]

Dated: August 2, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–18589 Filed 8–8–89; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Maduramicin Ammonium With Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Cyanamid Co. The application provides for use of currently approved maduramicin ammonium 1 percent Type A medicated articles and bacitracin methylene disalicylate 25, 40, or 50 grams per pound Type A articles to make combination drug Type C medicated feeds. The feeds are for the prevention of coccidiosis and for increased rate of weight gain and improved feed efficiency in broiler chickens.

EFFECTIVE DATE: August 9, 1989.

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Berdan Ave., Wayne, NJ 07470, is the sponsor of NADA 140–823 which provides for combining Cygro® (maduramicin ammonium) 1 percent Type A medicated articles with BMD® (bacitracin methylene disalicylate) 25, 40, or 50 grams per pound Type A articles to make Type C medicated broiler feeds. The Type C broiler feeds contain 4.54 to 5.45 grams of maduramicin ammonium activity with 4 to 50 grams of bacitracin activity per ton for the prevention of coccidiosis caused by *Eimeria acervulina, E. tenella, E. brunetti, E. maxima, E. necatrix,* and *E. mivati,* and for increased rate of weight gain and improved feed efficiency. The NADA is approved and 21 CFR 558.76 is amended by adding new paragraph (d)(3)(xiv) and 21 CFR 558.340 is amended by adding new paragraph (c)(3) to reflect the approval.

Maduramicin ammonium and bacitracin methylene disalicylate are new animal drugs used in separately approved Type A articles to make a combination drug Type C feed. Maduramicin ammonium is a category II drug which, as provided in 21 CFR 558.4, requires an approved form FDA–1900 for making a Type C feed from a Type A article as in the NADA as approved and in the regulations as amended in 21 CFR 558.340.

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

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.76 is amended by adding new paragraph (d)(3)(xiv) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(3) * * *

(xiv) Maduramicin ammonium as in § 558.340.

3. Section 558.340 is amended by adding new paragraph (c)(3) to read as follows:

§ 558.340 Maduramicin ammonium.

* * * * *

(c) * * *

(3) *Amount.* 4.54 to 5.45 grams per ton (5 to 6 parts per million) with bacitracin methylene disalicylate 4 to 50 grams per ton.

(i) *Indications for use.* For prevention of coccidiosis caused by *Eimeria acervulina, E. tenella, E. brunetti, E. maxima, E. necatrix,* and *E. mivati;* for increased rate of weight gain and improved feed efficiency.

(ii) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Do not feed to laying hens. Withdraw 5 days before slaughter. Bacitracin methylene disalicylate as provided by No. 046573 in § 510.600(c) of this chapter; maduramicin ammonium as provided by No. 010042 in § 510.600(c) of this chapter.

Dated: August 3, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–18588 Filed 8–8–89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2589

Final Regulation Relating to Civil Penalties Under FERSA Section 8477(e)(1)(B)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final regulation.

SUMMARY: This document contains a final regulation that sets forth the manner in which the Department of Labor (the Department) intends to assess civil penalties under section 8477 of the Federal Employees' Retirement System Act of 1986 (FERSA or the Act) against parties in interest who engage in prohibited transactions with the Federal Thrift Savings Fund established under FERSA. The final regulation adopts the definitions of terms and procedures established for assessment of civil penalties under section 502(i) of the Employee Retirement Income Security Act of 1974, 29 CFR Part 2560.502i–1 and Part 2570, Subpart A (53 FR 37474, Monday, September 26, 1988). The regulation will affect parties in interest such as participants in the Federal Thrift Savings Fund and the Fund's fiduciaries and service providers.

EFFECTIVE DATE: September 8, 1989.

FOR FURTHER INFORMATION CONTACT: Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, (202) 523–9141, U.S. Department of Labor, Washington, DC 20210 or David Lurie, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 523–8671, U.S. Department of Labor, Washington, DC 20210.

SUPPLEMENTARY INFORMATION: On September 26, 1988, the Department of Labor published a proposed regulation at 53 FR 37485 which is intended to provide definitions of terms and procedures for assessing civil penalties against parties in interest who engage in prohibited transactions with the Federal Thrift Savings Fund. The Department received no comments on the proposed regulation and therefore publishes the regulation as proposed for the reasons explained below.

Background

In 1986 Congress passed the Federal Employees' Retirement System Act (FERSA), as amended, 5 U.S.C. 8401 *et seq.*,[1] which established a retirement system for most civilian federal employees hired after December, 1983, and which provided for participation by certain other federal employees. Section 8437 of FERSA established a Thrift Savings Fund (the Fund) which consists of all employee and government contributions into the system, and the net earnings of the Fund. Section 8477(c) of FERSA prohibits certain transactions between the Fund and a "party in interest" (as defined in section 8477(a)(4) of the Act) with respect to the Fund. In section 8477(e)(1)(B), Congress granted the Secretary of Labor the authority to assess civil penalties against parties in interest who engage in prohibited transactions with the Fund. Pursuant to sections 8477(e)(1)(B) and 8477(f), the Secretary is issuing this regulation to carry out the Department's FERSA civil penalty functions.

Definition of Terms for FERSA Civil Penalty Proceedings

Pursuant to section 8477(e)(1)(B) of the Act, the regulation at 29 CFR 2589.1(a) provides that the initial penalty under section 8477(e)(1)(B) is five percent of the "amount involved" in each transaction for each year or part thereof during which the prohibited transaction continues. However, if the prohibited transaction is not corrected during the "correction" period, the civil penalty may be in an amount not more than one hundred percent of the "amount involved."

Section 8477(e)(1)(B) adopts the meaning given the terms "amount involved" and "correction" in the prohibited transaction excise tax provisions of the Internal Revenue Code (the Code or IRC). These Code provisions were also adopted for purposes of section 502(i) of ERISA which provides for assessment of civil penalties against parties in interest with respect to prohibited transactions involving ERISA-covered welfare plans and pension plans which are not "qualified" plans under the Code. On September 26, 1988, at 29 CFR 2560.502i–1, the Department issued a regulation interpreting section 502(i) which adopts

[1] Sections 8401 through 8479 of Title 5, United States Code (U.S.C.), were enacted by Congress at section 101(a) of FERSA. The Act itself provides no independent numbering system for these provisions, but directly assigns the chapter and section numbers under which those provisions are to be codified in Title 5 of the United States Code. For purposes of clarity and convenience, therefore, this preamble references the provisions of FERSA by using the U.S.C. section numbers which Congress assigned to them in the Act. Thus, for example, the following reference to "section 8437 of FERSA" is to Title 5 U.S.C. 8437.

the definitions of "amount involved" and "correction" as set forth in the Code and applicable IRC regulations. The Department's regulations under 502(i) also adopt the definition of "correction period" and the method of computation of penalties from the IRC regulations.

In light of the express Congressional intent that the prohibited transaction penalty provisions of FERSA and ERISA be interpreted consistently with the parallel Code provisions, the Department has determined to adopt the interpretations set forth at 29 CFR 2560.502i–1(b)–(e), which provide the terms for assessment of ERISA section 502(i) civil penalties, for purposes of prohibited transaction penalty proceedings under FERSA section 8477(e)(1)(B). *See* 29 CFR 2589.1(a).

Procedures for the Assessment of Civil Penalties Under FERSA

Section 8477(e)(1)(B) of FERSA grants the Secretary of Labor the authority to assess the FERSA prohibited transaction civil penalties, and under section 8477(f), the Secretary may prescribe regulations to implement civil penalty procedures. The Department believes that it is appropriate to administer the various civil penalty provisions under its authority consistently. After careful review, the Department has decided that the procedural regulations at 29 CFR Part 2570, Subpart A, which provide for assessment of ERISA section 502(i) civil penalties, are equally appropriate for civil penalty proceedings under FERSA section 8477(e)(1)(B). The Department therefore adopts 29 CFR Part 2570, Subpart A, as the rules of procedure applicable to prohibited transaction penalty proceedings under FERSA section 8477(e)(1)(B). *See* 29 CFR 2589.1(b).

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to rules which would have significant impact on a substantial number of small entities. A "rule" under the Regulatory Flexibility Act is one for which a general notice of proposed rulemaking is required under section 553(b) of the Administrative Procedure Act. Under section 553(b) of the Administrative Procedure Act a general notice of proposed rulemaking is not required for rules of agency organization, procedure or practice. Thus, such rules are excluded from the definition of "rule" under the Regulatory Flexibility Act. Since the procedural regulation (29 CFR 2589.1(b)) is a rule of agency procedure or practice it is thus not subject to the requirements of the Regulatory Flexibility Act.

The Department has also determined that the interpretative regulation at 29 CFR 2589.1(a) will not have any significant impact on a substantial number of small entities, and contains no reporting and disclosure requirements. The primary purpose of the regulation is to deter individuals who manage the Thrift Savings Fund from engaging in prohibited transactions, e.g., from using such assets for their own benefit. To that extent, the regulation will enable the Department to assess civil penalties on those individuals who are found to be violating the FERSA prohibited transaction provisions.

Based on anticipated enforcement experience under section 502(i) of ERISA, and taking into account both the difference in nature of the Thrift Savings Fund under FERSA as compared to private sector plans subject to section 502(i) of ERISA as well as the fact that this is a new program, the Department estimates that it will identify a very limited number of cases in any year which will result in penalties, and that in some years there will be no cases which result in such penalties. Given the selective nature of the burden imposed by this regulation, the Department believes that the regulation will not have a significant impact on small entities which provide services to the Thrift Savings Fund or small entities in which the Thrift Savings Fund invests.

Executive Order 12291

The Department has determined that this regulation does not constitute a "major rule" as that term is used in Executive Order 12291 because the action does not result in: an annual effect on the economy of $100 million; a major increase in cost or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The Paperwork Reduction Act mandates that agencies provide data with respect to information collection requirements which may be imposed by certain regulatory action. The regulation defining terms which relate to the assessment of civil sanctions under FERSA section 8477(e)(1)(B) does not contain any new information collection requirements and does not modify any existing requirements. Thus, it is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h). In addition, section 3508(c)(1)(B) of the Paperwork Reduction Act provides that the requirements of the Act do not apply to administrative actions involving specific individuals or entities. Thus, the Department has determined that the administrative adjudications which would be conducted pursuant to the procedures contained in this regulation fall within the scope of this exemption from the Paperwork Reduction Act.

Statutory Authority

The regulation is adopted pursuant to the authority contained in sections 8477(e)(l)(B) and (f) of FERSA (Sec. 101, Pub. L. No. 99–335, 100 Stat. 584, 586, 5 U.S.C. 8477(e)(1)(B) and (f), and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

List of Subjects in 29 CFR Part 2589

Administrative practices and procedures, Claims, Employee benefit plans, Federal Employee Retirement System, Law enforcement, Party in Interest, Pensions, Pension and Welfare Benefits Administration, Prohibited transactions.

Final Regulation

In view of the foregoing, Chapter XXV of Title 29 of the Code of Federal Regulations is amended by adding a new Subchapter K consisting of Part 2589 to read as follows:

SUBCHAPTER K—ADMINISTRATION AND ENFORCEMENT UNDER THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

PART 2589—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

Authority: Sections 8477(e)(1)(B) and (f) of FERSA (Sec. 101, Pub. L. No. 99–335, 100 Stat. 584, 586, 5 U.S.C. 8477(e)(1)(B) and (f), and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

§ 2589.1 Civil penalties under section 8477(e)(1)(B) of FERSA.

(a) Section 8477(e)(1)(B) of FERSA, 5 U.S.C. 8477(e)(1)(B), permits the Secretary of Labor to assess a civil penalty against a party in interest who engages in a prohibited transaction with respect to the Thrift Savings Fund. The initial penalty under section 8477(e)(1)(B) is five percent of the "amount involved" in each such

transaction for each year or part thereof during which the prohibited transaction continues. However, if the prohibited transaction is not corrected during the "correction period," the civil penalty may be in an amount not more than 100% of the "amount involved." The Department of Labor will apply the definitions set out in §§ 2560.502i–1(b)–(e) of this Chapter of Title 29 (civil penalties under section 502(i) of ERISA) in determining the "amount involved," "correction," "correction period," and for computation of the section 8477(e)(1)(B) penalty.

(b) The rules of practice set forth in §§ 2570.1–.12 of Part 2570, Subpart A of Subchapter G of this Chapter of Title 29 (procedures for the assessment of civil sanctions under ERISA section 502(i)) are applicable to prohibited transaction penalty proceedings under FERSA section 8477(e)(1)(B).

Signed at Washington, DC, this 2nd day of August, 1989.

Ann L. Combs,

Deputy Assistant Secretary for Policy.

[FR Doc. 89–18502 Filed 8–8–89; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 90143–9144]

RIN 0651–AA35

Amendment of Patent and Trademark Rules Concerning Judicial Review of Decisions of the Board of Patent Appeals and Interferences and the Trademark Trial and Appeal Board and Other Miscellaneous Matters; Correction

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final Rule; Correction.

SUMMARY: The Patent and Trademark Office is correcting errors in the final rule which appeared in the **Federal Register** on Thursday, July 13, 1989 (54 FR 29548).

1. On page 29551, in the third column, in § 1.136(b), in the tenth line, "affect" should read "effect".

2. On page 29553, in the first column, in § 1.303(c), the tenth line, "provided in 35 U.S.C. 146. The notice of" should read "provided in 35 U.S.C. 146, the notice of".

Dated: August 4, 1989

Fred E. McKelvey,

Solicitor.

[FR Doc. 89–18607 Filed 8–8–89; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3606–8]

Approval and Promulgation of Implementation Plans, Ohio; Ozone

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving a site-specific revision to the ozone portion of the Ohio State Implementation Plan (SIP) for the Goodyear Tire and Rubber Company (Goodyear) in St. Marys, Ohio. The revision, submitted by the State of Ohio on June 1, 1987, consists of variances for Goodyear's adhesive application lines K001, to K019, which exempts these lines from the requirements of Ohio Administrative Code (OAC) Rule 3745–21–09(U). The variances also limit the total volatile organic compound (VOC) emissions from the lines to 255 tons per year.

EFFECTIVE DATE: This final action becomes effective September 8, 1989.

ADDRESSES: Copies of the State submittal and other materials related to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Maggie Greene, at (312) 886–6088, before visiting the Region V Office.)

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

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

FOR FURTHER INFORMATION CONTACT: Maggie Greene, (312) 886–6088.

SUPPLEMENTARY INFORMATION:

I. Background Information

USEPA approved the Ohio VOC rules as part of the ozone SIP as meeting the reasonable available control technology (RACT) Part D requirements of the Clean Air Act on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097).[1] Although RACT VOC regulations are only required by Part D of the Clean Air Act in all ozone nonattainment areas, Ohio's rules are applicable to both attainment and nonattainment areas.

On November 23, 1988 (53 FR 47547), USEPA published a Notice of Proposed Rulemaking (NPR) on a revision to Ohio's ozone SIP for Goodyear Tire and Rubber in St. Marys. Although the State requested that this revision be approved as a site-specific RACT determination for Goodyear, USEPA proposed to approve this revision as a relaxation from RACT, in conjunction with the removal of the accommodative SIP for the area. In order for a site-specific RACT determination to be approvable, a source must demonstrate that it is either technically or economically infeasible to meet an emission rate limit lower than that proposed as site-specific RACT for the source.

Reductions in VOC emissions may be obtained, either by reducing the VOC content of the coatings, or by installing control systems to capture and destroy the VOC before they escape into the ambient air. Therefore, it must be demonstrated that both of these control methods are either technically or economically infeasible at the facility.

A detailed discussion on the extent of such an investigation of available coatings is contained in Appendix A of the proposed rulemaking on Easco published on November 9, 1988, at 53 FR 45285. (Although the Easco proposed rulemaking pertains to RACT requirements in a nonattainment area, the same kind of investigation applies to RACT determinations in attainment areas where there is an accommodative SIP in place.)

II. Public Comments

Comments on the NPR were received from the Ohio Environmental Protection Agency (OEPA) on December 23, 1988. These comments and USEPA's responses are provided below.

OEPA Comment

The OEPA believes no additional documentation is needed on the unavailability of complying coatings for bonding metal and rubber for the following reasons:

(1) The two coating suppliers (Lord Corp. and Dayton Chemical Products-Whittaker Corp.) identified in the technical support materials are the two major suppliers of metal-to-rubber adhesive coatings for the Ohio area.

[1] RACT is defined as the lowest emission rate that a source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

(2) The OEPA is not aware of any plants in Ohio that employ complying metal-to-rubber adhesive coatings (all affected plants not otherwise exempted had submitted variance applications).

USEPA Response

OEPA still has not made an adequate demonstration that complying coatings are unavailable. As discussed in the Notice of Proposed Rulemaking (NPR), the two suppliers identified in the technical support materials indicated that they currently have some water-based adhesives available and are working to develop others. OEPA has not addressed this point. In addition, the NPR references an appendix to a notice for Easco Aluminum, published on November 9, 1988 (53 FR 45288), which contains a detailed discussion of the kind of demonstration required. OEPA has made no attempt to address these requirements.

OEPA Comment

Assuming that USEPA agrees on the unavailability of complying coatings, the OEPA prefers to use a tons per year limit, in place of a very high VOC content limit. The tons of VOC per year limit is a status quo limit that is related to the submitted study on cost-effectiveness of add-on control. There is a purpose to the annual VOC limit. However, the use of a pounds of VOC per gallon limit, based on the highest VOC content currently employed, really has no meaningful purpose. The current coatings average 6.4 pounds of VOC per gallon.

USEPA Response

It is not acceptable to use a tons per year limit, in place of a VOC content limit. RACT for surface coating lines is generally defined in terms of pounds of VOC per gallon of coating. If OEPA is concerned with the total mass emission limit, such a limit may be allowed, along with a VOC content limit. However, USEPA believes that in practice, an annual emission limit is not enforceable under Section 113 of the Clean Air Act. USEPA does not approve such limits in nonattainment areas or for the purposes of new source review. See John R. O'Conner's January 20, 1984, memorandum entitled "Averaging Time for Compliance with VOC Emission Limits—SIP Revision Policy" and Edward E. Reich's March 13, 1986, memorandum entitled "Time Frames for Determination of Applicability to New Source Review."

OEPA Comment

If USEPA still believes that this revision is a RACT relaxation, the OEPA must point out that the affected operations come under Standard Industrial Classification (SIC) Code 3069 (fabricated rubber products), and such operations are not really subject to USEPA's RACT determination for miscellaneous metal parts or products. The USEPA guidance documents do not include operations under SIC code 3069. See Table 1.1 (page 1–2) in the document *EPA–450/2–78–015*, and see page 28 in the document *EPA–450/2–79–004*.

USEPA Response

Although the Control Techniques Guidelines (CTG) for miscellaneous metal parts and products does list many categories of sources which are covered, it does not specifically exempt any categories. The purpose of this CTG was to "provide guidance on VOC emission control for job shop and original equipment manufacturing (OEM) industries which apply coatings on metal substrates which have not been the subject of more specific previous documents in this series." For this reason, the application of any coating to a metal substrate must be considered subject to the miscellaneous metal parts and products CTG, unless it is covered by another CTG or specifically exempted.

III. Conclusion

Region V reviewed OEPA's public comments and determined that none of the comments justifies a change from USEPA's proposed action. USEPA is approving this SIP revision request as a relaxation from RACT because the source is located in Auglaize County, which is a rural attainment area for ozone; and the Clean Air Act does not require RACT level VOC control on existing sources in attainment areas. However, this final approval eliminates the accommodative ozone SIP in Auglaize County, Ohio.

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

Petitions for judicial review of the action under section 307(b)(1) of the Clean Air Act must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: June 13, 1989.

Valdas Adamkus,

Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Ohio—Subpart KK

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1870 is amended by adding new paragragh (c)(84) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(84) On June 1, 1987, the Ohio Environmental Protection Agency (OEPA) submitted a revision request to Ohio's ozone SIP for the Goodyear Tire and Rubber Company in St. Marys (Auglaize County) Ohio. The revision was in the form of variances for adhesive application lines K001 to K019 and exempts them from the requirements contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U). These variances expire on [3 years and 30 days from date of publication). The accommodative SIP for Auglaize County is removed for the period these variances are in effect.

(i) *Incorporation by reference.* (A) Condition Number 8 (which references Special Terms and Conditions Numbers 1 through 5) within each of 19 "State of Ohio Environmental Protection Agency Variances to Operate An Air Contaminant Source", Application Numbers 0306010138K001–0306010138K019, for Goodyear Tire and Rubber Company. The Date of Issuance is May 22, 1987.

[FR Doc. 89–18497 Filed 8–8–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 167

[OPP–70000B; FRL–3625–4]

Registration of Pesticide and Active Ingredient-Producing Establishments, Submission of Pesticide Reports; Confirmation of Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Confirmation of effective date.

SUMMARY: This document announces the effective date of a final regulation issued by the Agency on September 8, 1988. As required by section 25(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA submitted the final regulation to both Houses of Congress for review prior to it taking effect. The rule required that producers of pesticide active ingredients register their establishments and submit reports to EPA. The final rule was published in the **Federal Register** of September 8, 1988 (53 FR 35056). The minimum 60-day period for Congressional review has ended.

EFFECTIVE DATE: The regulation is effective on August 9, 1989.

FOR FURTHER INFORMATION CONTACT: Phyllis Flaherty, Office of Compliance Monitoring (EN-342), Environmental Protection Agency, Rm. E-703C, 401 M St., SW., Washington, DC 20460, 202-382-7825.

SUPPLEMENTARY INFORMATION: EPA issued a final regulation requiring producers of active ingredients to register their establishments and submit reports to EPA. The final regulation also deleted the establishment registration requirement for custom blenders as well as several minor changes clarifying the requirements for pesticide-producing establishments.

However, as required by section 25(a) (4) of FIFRA, the final rule could not take effect until it had been submitted to Congress for a period of 60 days of concurrent Congressional session, as defined by section 25(a)(4). Since it was not possible to predict an exact date on which the Congressional review period would end, the preamble to the final rule stated that EPA would issue a **Federal Register** notice after the review period was over announcing the effective date of the regulation. The 60-day period of continuous Congressional session ended on April 19, 1989.

Accordingly, the final regulation promulgated on September 8, 1988, is effective on August 9, 1989.

List of Subjects in 40 CFR Part 167

General provisions, Registration requirements, Recordkeeping and reporting requirements.

Dated: July 21, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-18255 Filed 8-8-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-7; FCC 89-256]

Broadcast Services; Amendment of the Radio-TV Cross-Ownership Rule To Liberalize the Commission's Waiver Policy With Respect to the Common Ownership of a Radio-TV Station Combination in the Same Market

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This decision considers petitions for reconsideration of the *Second Report and Order* in MM Docket No. 87-7, which adopted new waiver policies for the common ownership of radio and television combinations the same market. This action reaffirms the decision to look with favor upon waivers of the multiple ownership rules in the top 25 markets where there are 30 or more separately owned, operated, and controlled broadcast licensees after the proposed merger. The decision also deletes a rule adopted in the *Second Report and Order* barring ownership of more than one AM station, one FM station and one television station in a single metropolitan market to give the Commission discretion to consider combinations involving a television station and more than one radio station in the same service when unique public interest benefits can be demonstrated.

EFFECTIVE DATE: August 2, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tatsu Kondo, Policy and Rules Division, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's decision in MM Docket No. 87-7, adopted August 2, 1989, and released August 4, 1989. The full text of this Commission decision is available for inspection and copying during business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Decision

1. The *Second Report and Order* in MM Docket No. 87-7, 54 FR 8744 (March 2, 1989) ("*Second Report and Order*"), relaxed on the Commission's one-to-a-market multiple ownership rule, which prohibits the common ownership of radio and television stations in the same television market. Although the Commission retained the rule, it adopted a new, more relaxed case-by-case waiver policy for all potential radio-TV combinations. First, the Commission will look favorably upon waiver applications involving radio and television station combinations in the top television markets where there are at least 30 separately owned, operated and controlled broadcast licensees or "voices" after the proposed merger. Second, it will look favorably upon proposed combinations involving at least one "failed station"—*i.e.*, a station that has not been operated for a substantial period of time or that is involved in bankruptcy proceedings. All other waiver applications will be examined on a case-by-case basis upon certain specific public interest criteria.

Under the new waiver policy, however, the Commission stated it would not grant any application if the proposed combination would result in any one entity holding an attributable interest in more than one AM station, one FM station, and one television station in any single television "metro" market, as defined by the Arbitron Ratings Company.

2. Great American Television and Radio, Inc., and Holston Valley Broadcasting Corp. filed petitions for reconsideration of the *Second Report and Order*. Great American requested that the Commission reconsider its decision to limit its new waiver policy to the top 25 markets. Great American is the licensee of stations in the 28th and 29th markets, and each of those markets has 30 or more voices. Great American argued that there was no reason for the Commission to adopt a top 25 market cut-off in the *Second Report and Order*. It therefore requested that the Commission apply its new waiver policy to all markets in which there are 30 or more voices.

3. The Commission determined that Great American had not presented arguments in its request for reconsideration not already considered prior to adoption of the top 25 market/30 voices standard for the new waiver policy. Before adopting this standard, the Commission carefuly considered other options suggested by the commenters, including whether to expand the cut-off to more markets or whether to have a market cut-off at all. Based on the relemaking record, however, the Commission determined that a cautious approach, limiting the new waiver policy to the very largest, or top 25 markets where there are at least

30 voices, would enable both the public and broadcasters to benefit from common ownership and allow the Commission to monitor the effects of the modified one-to-a-market rules. It therefore denied Great American's request for reconsideration. The Commission emphasized, however, that it will carefully consider all waiver petitions, both within and outside the top 25 markets, in order to ensure that factually comparable petitions are resolved in a similar manner.

4. The second petition for reconsideration was filed by Holston Valley Broadcasting Corp. Holston is the licensee of a UHF television station, an AM station, and an FM station in the 86th television market, and is the proposed assignee of a second AM station in that market. Holston requested that the Commission reconsider its decision to prohibit common ownership of a television station and more than one radio station in the same service. This prohibition bars the Commission from evaluating waiver requests involving more than one radio station in the same service, even if the proposed radio-TV combination could be demonstrated to have unique public benefits. The Commission found that to preclude it from exercising its discretion and judgment to assess the costs and benefits of such combinations is detrimental to the public interest. Therefore, on reconsideration, the Commission determined that the flat prohibition against combinations involving common ownership of a television station and more than one radio station in the same service should be eliminated so that such proposed combinations could be evaluated on a case-by-case basis. Thus, the Commission granted Holston's petition for reconsideration and amended the multiple ownership rules accordingly.

5. *Final Regulatory Flexibility Analysis:* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, a change was made to the final regulatory flexibility analysis in the *Second Report and Order.* The rule change will not have a significant impact on a substantial number of small entities because the modification of the rules adopted in the *Second Report and Order* simply permits the Commission discretion to evaluate waivers of the one-to-a-market rule involving more than radio station in the same service and a television station in the same market.

6. Therefore, *it is ordered,* pursuant to Sections 4(i) and 303 of the Communications Act of 1934, as amended, and Section 1.429(i) of the Commission's Rules, That the Petition for Reconsideration filed by Great American Television and Radio Co. is denied. *It is Further Ordered,* pursuant to Sections 4(i) and 303 of the Communications Act of 1934, as amended, and Section 429(i) of the Commission's Rules, That the Petition for Reconsideration and Clarification filed by Holston Valley Broadcasting Corp. *is granted* to the extent set forth above.

7. *It is further ordered* That Part 73 is amended effective upon adoption of this *Memorandum Opinion and Order. See* 5 U.S.C. 553(d)(1).

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Rule Amendments

Part 73 of the Code of Federal Regulations is amended to read as follows:

PART 73—[AMENDED]

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

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

2. Section 73.3555 is amended by revising Note 7 to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

Note 7: The Commission will entertain requests to waive the restrictions of paragraph (b) of this section on a case-by-case basis. The Commission will look favorably upon waiver applications that meet either of the following two standards: (1) Those involving radio and television station combinations in the top 25 television markets where there will be at least 30 separately owned, operated and controlled broadcast licensees after the proposed combination, as determined by counting television licensees in the relevant ADI television market and radio licensees in the relevant television metropolitan market; (2) those involving "failed" broadcast stations that have not been operated for a substantial period of time, *e.g.,* four months, or that are involved in bankruptcy proceedings. For the purposes of determining the top 25 ADI television markets, the relevant ADI television market, and the relevant television metropolitan market for each prospective combination, we will use the most recent *Arbitron Ratings Television ADI Market Guide.* We will determine the number of radio stations in the relevant television metropolitan market and the number of television licensees within the relevant ADI television market based on the most recent Commmission ownership records.

Other waiver requests will be evaluated on a more rigorous case-by-case basis, as set forth in the *Second Report and Order* in MM Docket No. 87-7, FCC 88-407, released February 23, 1989, and *Memorandum Opinion and Order* in MM Docket No. 87-7, FCC 89-256, released August 4, 1989.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18631 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-73; RM-6523]

Radio Broadcasting Services; Linden, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 275C2 for Channel 275A at Linden, Alabama, and modifies the Class A permit of Linden Radio Joint Venture, as requested, to specify operation on the higher powered channel, thereby providing that community with an additional expanded coverage FM service. See 54 FR 13533, April 4, 1989. Coordinates used for Channel 275C2 at Linden are 32-28-03 and 87-37-48. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 18, 1989.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-73, adopted July 11, 1989, and released August 3, 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.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Linden, Alabama, is amended by removing Channel 275A and adding Channel 275C2.

Federal Communications Commission

Karl A. Kensinger,

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

[FR Doc. 89-18579 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-195; RM-5526 and RM-5587]

Radio Broadcasting Services; Bloomington and Nashville, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants the request of Bruce Quinn to allot Channel 236A to Nashville, Indiana to provide for its first local broadcast outlet. This channel can be allotted to Nashville in compliance with the Commission's minimum distance separation requirements using a site located at coordinates North Latitude 39-10-46 and West Longitude 86-15-47. The Commission rejected the request of Bloomington County Radio to allot Channel 236A to Bloomington, Indiana for non-commercial educational FM (NCE-FM) use, on a reserved or non-reserved basis. The Commission refused to reserve Channel 236A for NCE-FM use because Bloomington County Radio failed to show convincingly that harmful interference to reception of Indianapolis Channel 6 TV station could not be avoided when using one of the channels normally reserved for NCE-FM use. With this action, the proceeding is terminated.

DATES: Effective September 11, 1989; the window period for filing applications will open on September 12, 1989 and close on October 12, 1989.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-195, adopted June 27, 1989, and released July 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in 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.

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 by adding Nashville, Indiana, Channel 236A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy & Rules Division, Mass Media Bureau.

[FR Doc. 89-18640 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-493; RM-5912]

Radio Broadcasting Services; Columbia and Fulton, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 252C2 for Channel 252A at Columbia, Missouri, and modifies the license of Station KFMZ(FM). This action is taken in response to a petition filed by Contemporary Broadcasting, Inc. To accommodate the upgrade at Columbia, it is necessary to make a substitution at Fulton, Missouri. Thus, Channel 263A is substituted for Channel 249A at Fulton, and the license of Station KKCA is modified accordingly. With these actions, this proceeding is terminated.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Douglas Minster, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87-493, adopted June 30, 1989, and released August 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.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. 47 CFR 73.202(b), the Table of FM Allotments, is amended under Missouri by removing Channel 252A and adding Channel 252C2 at Columbia, and by removing Channel 249A and adding Channel 263A at Fulton.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89-18632 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-103, Amdt. No. 192-61A]

Transportation of Gas by Pipeline; Marking of Materials

AGENCY: Office of Pipeline Safety, DOT

ACTION: Technical amendment.

SUMMARY: In Amendment No. 192-61, published in the **Federal Register** on Thursday, September 22, 1988 (53 FR 36793), § 192.63 was amended by removing paragraph (b) and redesignating paragraphs (c)-(e) as (b)-(d). However, in paragraph (a), the cross reference to the old paragraph (e) was inadvertently not changed to reference the redesignated paragraph (d). This document corrects paragraph (a) so that it references paragraph (d).

DATE: This amendment takes effect August 9, 1989.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366-2392.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 192

Pipeline safety, Materials, Marking.

Therefore, Part 192 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

§ 192.63 [Amended]

2. The text of § 192.63(a) is amended by removing "paragraph (e)" and adding in its place "paragraph (d)."

Issued in Washington, DC, on August 3, 1989.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 89-18561 Filed 8-8-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 90407-9170]

RIN 0648-AC74

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands

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

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 12a to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). As approved by the Secretary of Commerce (Secretary), this rule will control the incidental harvest of certain species of crabs and Pacific halibut in commercial fisheries for groundfish in the U.S. exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI) area. These regulations are necessary for the conservation and management of marine fishery resources in the EEZ of BSAI area and for the orderly conduct of groundfish fisheries.

EFFECTIVE DATE: September 3, 1989, through December 31, 1990.

ADDRESSES: Individual copies of Amendment 12a and the environmental assessment, regulatory impact review, and final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: Domestic and foreign groundfish fisheries in the EEZ of the BSAI area are managed in accordance with the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations appearing at 50 CFR 611.93 and part 675.

The Council approved Amendment 12a to the FMP at its January 16-19, 1989 meeting for submission to the Secretary for review, approval and implementation under sections 304(a) and 305(c) of the Magnuson Act. The Secretary received Amendment 12a on April 4, 1989 and immediately began a review to determine its consistency with the Magnuson Act and other applicable law. The Director, Alaska Region, NMFS (Regional Director) determined that the amendment was consistent with the Magnuson Act and other applicable law. A notice of availability of Amendment 12A was published in the Federal Register on April 10, 1989 (54 FR 14256, correction at 54 FR 15302, April 17, 1989). Proposed implementing regulations were published on May 4, 1989 (54 FR 19199, correction at 54 FR 21343, May 17, 1989). The corrected notice of availability invited public review and comment until June 5, 1989 and the corrected notice of proposed rulemaking invited comments until June 12, 1989. Thirteen letters commenting on the amendment and its proposed implementing regulations were received and considered in developing this final rule. Several minor changes were made between the proposed and final rules for clarification purposes and are described later. A summary of, and response to, all comments received is given below.

Description

The purpose of Amendment 12A is to limit incidental catches of *Chionoecetes bairdi* Tanner crab, red king crab (*Paralithodes camtschatica*), and Pacific halibut (*Hippoglossus stenolepis*) by the groundfish fisheries in the BSAI area and thus minimize the impact of domestic groundfish fisheries on these species. Such incidental catches are referred to as bycatches in fisheries targeting other species. The FMP and its implementing regulations define these species of crabs and halibut as prohibited species which, if caught while fishing for groundfish, must be returned to the sea with a minimum of injury (§ 675.20(c)). Amendment 12a reflects an effort to balance potentially excessive bycatches of prohibited species in the groundfish fishery against added operating costs resulting from bycatch control regulations. As such, the Council has determined that the bycatch controls imposed by this amendment will provide the domestic groundfish fishery sufficient opportunity to harvest the total allowable catch of groundfish while keeping the wasteful discard of incidentally harvested prohibited species to a reasonable minimum.

To achieve this purpose, the Council proposed specification of prohibited species catch (PSC) limits for *C. bairdi* Tanner crab, red king crab and halibut and apportionment of these PSC limits among four specified groundfish fisheries. When a specified fishery reaches its apportionment of the PSC limit, it will be prohibited from fishing in certain areas or bycatch limitation zones for the remainder of the fishing year. A full description of Amendment 12A is given in the preamble to the proposed rule. The following is a summary of what it will accomplish.

Bycatch Limitation Zones

Three bycatch limitation zones are established (see Figure 2). Zones 1 and 2 would be identical to those under Amendment 10 to the FMP. A new halibut protection zone, Zone 2H, is established in that part of Zone 2 that is south of 56°30' N. latitude and between 165° and 170° W. longitude. These zones describe areas in which crab and halibut stocks are especially abundant. Approximately 88 percent of the total red king crab population of the Bering Sea and Aleutian Islands is estimated to be within Zone 1. About 98 percent of the *C. bairdi* Tanner crab population of the Bering Sea and Aleutian Islands is estimated to be within Zones 1 and 2 combined and about 60 percent in only Zone 2. Pacific halibut are more broadly distributed in the Bering Sea than are crab species. However, Zones 1 and 2H combined encompass an area known for high abundance of juvenile halibut and for seasonal migration of halibut between deep and shallower continental shelf waters. Sequential closing of these zones to groundfish fisheries which have attained their share of the PSC limits provides for a reduction in bycatch rates without prohibiting the fisheries access to all Bering Sea groundfish resources.

An area within Zone 1, south of 58° N. latitude and between 160° and 162° W. longitude, is closed to all fishing with trawl gear. The western boundary of this closed area will be extended to 163° W. longitude during the period March 15 through June 15. This closed area will protect a significant portion of the red king crab and *C. bairdi* Tanner crab stock from trawl gear. An exception to the closed area and its seasonal extension is provided in that part of the area south of a line approximating the 25 fathom isobath. This exception applies only to directed fishing for Pacific cod, provided that a PSC limit of 12,000 red king crabs is not exceeded. The purpose of this exception is to allow fishing for Pacific cod in that part of the closed area in which crab

bycatch has been demonstrated to be relatively low.

Fisheries

For purposes of this action, two domestic annual processing (DAP) fisheries and two joint venture processing (JVP) fisheries are defined as follows:

(a) "DAP flatfish fishery" means DAP fishing which, on a weekly basis, retains yellowfin sole, rock sole, and "other flatfish" in the aggregate that is 20 percent or more of the total amount of groundfish retained.

(b) "DAP other fishery" means DAP fishing which, on a weekly basis, retains any other combination of groundfish species that would not qualify such fishing as a "flatfish fishery."

(c) "JVP flatfish fishery" means JVP fishing which, on a weekly basis, delivers yellowfin sole, rock sole, and "other flatfish" in the aggregate to foreign vessels that is 20 percent or more of the total amount of groundfish delivered.

(d) "JVP other fishery" means JPV fishing which, on a weekly basis, delivers to foreign vessels any other combination of groundfish species that would not qualify such fishing as a "flatfish fishery."

Foreign directed fishing would not be affected by this rule. Existing PSC limits specified in the foreign fishing regulations (§ 611.93) would apply to foreign fishing if any allocation of groundfish in the BSAI area is made to foreign directed fishing during the effective period of this rule.

PSC Limits

For *C. bairdi* Tanner crab, the PSC limit is 1,000,000 animals in Zone 1 and 3,000,000 animals in Zone 2. For red king crab, which are distributed almost entirely within Zone 1, the PSC limit is 200,000 animals in Zone 1. Bycatches of these crab species within the two bycatch limitation zones would be counted against the respective PSC limits. The PSC limit for Pacific halibut is applied differently. Because halibut are more broadly distributed than crabs, bycatches of halibut anywhere in the BSAI area are counted against a primary PSC limit of 4,400 metric tons (mt) which would lead to closures of Zones 1 and 2H and a secondary PSC limit of 5,333 mt which would trigger a closure of the entire BSAI area.

These PSC limits were the subject of negotiations between trawl fishing industry representatives and those of the crab and halibut fishing industries. Determination of the PSC limits began with the best available scientific information on the abundance and distribution of the specified crab and halibut species, and their rate of bycatch in fisheries for certain species of groundfish, and proceeded in public meetings of the Council's Bycatch Committee during 1987 and 1988. In addition, the Council heard extensive public debate and testimony during 1988 and at its January 1989 meeting on this issue. Although a consensus was not achieved and some PSB limits remain controversial, the Council determined that the bycatch control measures in Amendment 12a achieve the desired balance between excessive bycatch and unreasonably prohibitive bycatch control. Due to the unique blend of allocative and biological concerns represented in this bycatch control issue, the Secretary is not substituting his judgement for that of the Council's in determining that the PSC limits should be, if any. Instead, the Secretary limited review of Amendment 12a to the question of whether the Council's recommended PSC limits are consistent with the Magnuson Act and other applicable law. NOAA has determined, and the Secretary has concurred with the finding, that they are consistent with applicable statutes.

Apportionment, Monitoring and Enforcement of PSC Limits

Each PSC limit will be apportioned among the four specified fisheries in proportion to the anticipated bycatch of each fishery. Anticipated bycatches for a fishing year will be derived from a mathematical model which predicts the total annual unconstrained bycatch by each fishery based on known or estimated bycatches from the most recent previous years. The proportion of a fishery's predicted bycatch to the total predicted bycatch of a species will be the share of that species' PSC limit apportioned to that fishery, or its PSC allowance, in that fishing year.

Each PSC allowance will be determined annually by the Regional Director in consultation with the Council and made available for public comment concurrently with the notice of preliminary initial specification of harvestable amounts of groundfish required under § 675.20(a)(6). A final notice of PSC allowances also will be published concurrent with the final notice of initial specifications. Existing authority to make inseason adjustments to PSC allowances is revised to allow correction of a PSC allowance that was initially incorrectly specified due to a calculation error or wrong assumption in predicting a fishery's bycatch.

Since this amendment is implemented during 1989, the above procedure for specifying PSC allowances for the 1989 fishing year was not followed exactly. Instead, proposed PSC allowances were published in Table 2 of the proposed rule (at 54 FR 19205) and comments on them were specifically requested. No comments on the proposed PSC allowances per se were received. The PSC allowances in Table 2 of this notice serve as the final notice of initial specification of the PSC allowances for the 1989 fishing year.

Observed or estimated bycatches of crabs and halibut caught with groundfish will be counted and totals estimated using standard statistical procedures. The total bycatch of crabs and halibut reported or estimated for any one week (Sunday through Saturday) reporting period will be credited to the bycatch allowance of the DAP or JVP "flatfish fishery" if the total amount of groundfish retained or delivered during that reporting period is composed in the aggregate of 20 percent or more of yellowfin sole, rock sole, and "other flatfish." If the total amount of groundfish retained or delivered in any one week reporting period is composed of any other combination of groundfish species which does not qualify as "flatfish," then the total amount of crabs and halibut taken as bycatch during that week will be credited to the bycatch allowance of the DAP of JVP "other fishery." In the absence of observers on DAP fishing vessels, crab and halibut bycatches in the DAP fisheries will be calculated from estimated bycatch rates, based on the best available information.

For DAP bycatch accounting purposes, discriminating between the "flatfish" and "other" fisheries will be based on a blend of data from the weekly catch/receipt reports required of catcher/processors and mothership/processors under § 675.5(a)(3)(iv) and the fish ticket reports required of all DAP fishing vessels under § 675.5(a)(1). For purposes of determining when a PSC allowance for a DAP fishery will be attained, the Regional Director may forecast bycatches of crabs and halibut based on recent weekly catch/receipt and fish ticket reports and any pertinent observer reports.

Any catch of groundfish by U.S. fishermen, on a weekly basis, will occur within one of the four specified fisheries as defined above and bycatches will be credited accordingly against the PSC allowance of the respective fishery. Theoretically, PSC limits will not be exceeded since attainment of a fishery's PSC allowance in a bycatch limitation zone or area will trigger closure of that fishery in that zone or area. For example, when the "DAP flatfish fishery" attains its PSC allowance of

either *C. bairdi* Tanner crab or red king crab in Zone 1, then the Secretary will prohibit DAP directed fishing for yellowfin sole, rock sole, and "other flatfish" for the remainder of the fishing year in Zone 1. Directed fishing is defined at § 675.2. Attainment of a PSC allowance of an "other fishery" however, would not trigger closure of directed fishing for all other species. Instead, this rule provides only for the closure of directed fishing for Pacific cod and pollock with bottom trawl gear when the PSC allowance of the "other fishery" is attained. Fishing for other species in the "other fishery" with bottom trawl gear and fishing with off-bottom or mid-water trawl gear could continue. The reason for this difference between responding to attainment of the PSC allowance of the "flatfish fishery" and that of the "other fishery" is that bycatches of halibut and crabs appear to be significant in the "other fishery" only when fishermen target Pacific cod and pollock with bottom trawl gear.

In addition, the monitoring of the PSC allowances for halibut differs somewhat from that of the PSC allowances for crabs. A fishery's bycatches of red king crab and *C. bairdi* Tanner crab taken within a bycatch limitation zone that accrue to a crab PSC allowance for that zone will trigger closure of that zone to that fishery. Bycatches of Pacific halibut anywhere in the BSAI area, however, accrue to the primary and secondary PSC allowances for halibut. Attainment of the primary PSC allowance by a fishery will trigger closure of Zones 1 and 2H to that fishery. If that fishery subsequently attains its secondary PSC allowance, it will be prohibited from the entire BSAI area. The reason for this difference in enforcing the PSC allowances of crabs and halibut is that halibut are more broadly distributed on the eastern Bering Sea shelf than are crabs.

Specific Changes From the Proposed Rule in the Final Rule

No substantive changes are made in the final rule as a result of review of and comment on the proposed rule. Several minor wording changes in the preamble and regulatory text are made to improve clarity, however. The first involved a slight change in the definition of a DAP or JVP "other fishery." In the proposed rule and preamble, a DAP other fishery means "DAP fishing which, on a weekly basis, retained groundfish that is 95 percent or more pollock, or 50 percent or more pollock and Pacific cod in the aggregate, or any other combination of groundfish species that would not qualify such fishing as a "flatfish fishery." Similar language was used with respect to the meaning of a JVP "other fishery." NOAA considered this definition too cumbersome since the operative language is "* * * any combination of groundfish species that would not qualify such fishing as a "flatfish fishery." A weekly aggregate catch of groundfish that is retained by a DAP operation or delivered to foreign vessels in a JVP operation must be categorized as either a "flatfish fishery" or an "other fishery" for bycatch accounting purposes. There is no way for a weekly aggregate of groundfish to be categorized differently. To make this intent and meaning clear, the phrase "groundfish that is 95 percent or more pollock, or 50 percent or more pollock and Pacific cod in the aggregate, or," is deleted from the preamble and regulatory text of the final rule (§ 675.21(b)(3) (ii) and (iv)).

The second change involves the Secretary's inseason management authority at § 675.20(e)(4). This paragraph provides for the adjustment of a TAC, PSC limit or PSC allowance that is determined by the Regional Director to be incorrectly specified given the actual performance of a fishery during the fishing season which is different from that predicted. The inseason management authority accommodates such differences by allowing discretion to correct previously specified PSC allowances. To clarify this authority in a way which is consistent with the preamble of the proposed rule point, NOAA had added the words "and harvest" to the first sentence of § 675.20(e)(4) after the phrase "* * * concerning the biological stock status * * *" and added the phrase "or to allow redistribution of uncaught PSC allowances among fisheries" at the end of the paragraph.

Another change from the proposed rule to the final rule involves language in § 675.20(e)(4). The adjective "best" is added before "available scientific information" and the phrase "and harvest" is added after "biological stock status" to indicate that harvest data will also be used by the Regional Director to determine correctness of PSC limits and PSC allowances for a given species.

Also, in the proposed rule the latitude for one of the coordinates for the definition of *Bycatch Limitation Zone 2H*, was incorrectly listed as 55° 44'. This latitude in the final rule has been corrected to read 55° 42'.

Comments Received

Fourteen letters of comment on the proposed rule were received prior to the end of the comment period on June 12, 1989. Three letters of comment were received after the close of the comment period, but the substance of these letters presented no issue or point of view uniquely different from the other letters. Most of the letters in opposition to the proposed rule reiterated common themes such as discontent with the restrictiveness of the rule and questioned its fairness. Similar comments are summarized as a single comment. All unique comments are treated separately.

Comment 1: The PSC limits are too low, unnecessarily restrictive, and will cause severe economic impacts in excess of $100 million on the trawl fisheries when areas are closed. As such, Amendment 12A constitutes a "major rule" under Executive Order 12291 (E.O. 12291). PSC limits should not be expressed as fixed amounts but rather as proportions of the total population of the prohibited species in the area.

Response: This opinion was reiterated in most of the letters written in opposition to Amendment 12A. It reflects a view that any bycatch limit is too low that inhibits the catch of groundfish by a fisherman with an "average" unconstrained bycatch rate. This view is inconsistent with the Council's policy of limiting the bycatch of crabs and halibut in the groundfish fisheries to less than what would be taken in unconstrained groundfish fisheries. The objective of Amendment 12a is to reduce the biological and economic effect of the groundfish fisheries on fisheries for crabs and halibut from what it would be without such control. This action implementing Amendment 12a is intended to modify unconstrained fishing behavior so as to reduce bycatch rates.

There is no question that modifying behavior by requiring compliance with a rule is achieved at some cost. NOAA would agree that a rule is unnecessarily restrictive if the cost of compliance is excessive relative to its biological, economic, social and environmental benefits. In this instance, the behavior modification cost to trawlers is not clear. Although the regulatory impact analysis indicates that forgone groundfish and profits to the groundfish fishery under this rule could produce negative benefits, such a scenario is based on an assumption that trawl fishermen will not modify their fishing behavior from what it would be with no bycatch controls. NOAA does not believe that this scenario, although analytically useful, is realistic. The groundfish trawl fishing fleet is more likely to respond to the potential for lost revenues by modifying fishing patterns and practices to reduce bycatch rates,

and thereby mitigate any negative impacts on their profits. The Council heard considerable public testimony at its January 1989 meeting that, given imposition of the Amendment 12a bycatch controls, the groundfish fishery would use all available technology and expertise to reduce the bycatch of crabs and halibut to avoid costly area closures. In addition, NOAA is persuaded by the positive response to similar bycatch limits imposed on the foreign fisheries in 1983 and on the JVP fishery in 1985 which resulted in substantial reduction in observed bycatch rates without apparently costing those fisheries significant forgone groundfish harvests.

In any event, this action has been thoroughly reviewed for consistency with E.O. 12291 and other applicable law. To the extent that net quantifiable benefits may not occur despite the best efforts of trawl operators to reduce bycatches by modifying fishing behavior, unquantifiable environmental benefits still warrant taking this action. Such benefits include the reduction of crab and halibut mortality from encounters with trawl gear that do not result in their capture.

NOAA agrees that PSC limits expressed as a proportion would better accommodate changes in population abundance of crabs and halibut. This rule, in which the PSC limits are established as fixed amounts, however, will be effective only through 1990, or less than 18 months. In addition, the recommended PSC limits are based on the most recent (1988) estimates of crab and halibut population sizes. Therefore, NOAA finds that the recommended PSC limits as fixed amounts are acceptable.

Comment 2: The PSC limits on crabs violate National Standards 1, 2 and 4. The proposed rule violates National Standard 4 in that it discriminates between categories of U.S. harvesters and does not allocate PSC limits fairly and equitably. The proposed bycatch controls are not equitable in that crab bycatches in the crab fishery may be far in excess of bycatches in the trawl fishery. Amendment 12a ignores the bycatches of the longline (pot and hook) fisheries for groundfish. The assumption that the trawl fleet is the culprit in the bycatch issue is unfounded and there is inequity in the treatment between trawl and other gear types.

Response: National Standard 1 requires management measures to prevent overfishing while achieving optimum yield from each fishery (Magnuson Act section 301(a)(1)). The prescribed PSC limits serve to prevent overfishing of crab stocks by imposing a constraining limit on crab bycatches in the groundfish fishery, even though the bycatch mortality of crabs from trawl gear is not solely responsible for changes in crab abundance. In the same way, the PSC limits also assure that the optimum yield in the crab fishery is achieved insofar as impacts from the groundfish fishery affect that optimum yield of crabs. Achievement of the optimum yield of groundfish is assumed, providing trawl operators respond positively to the incentive to reduce their bycatch rates. In making this assumption, NOAA relies on previous experience controlling the prohibited species bycatches in the foreign and JVP groundfish fisheries.

National standard 2 requires that management measures be based on the best available scientific information. After review of the environmental and regulatory impact analysis supporting this action, NOAA finds that it is consistent with this standard. The analysis is based largely on crab distribution and abundance estimates derived from the 1988 crab survey of the Eastern Bering Sea performed by NMFS crab biologists. These estimates will not be revised until after the 1989 survey is complete, probably in September 1989. Bycatch assumptions used in the analysis are based on observed bycatch rates in the 1987 and 1988 JVP groundfish fisheries. NOAA recognizes the statistical limitations of its crab biomass estimates and of extrapolating the performance of DAP fisheries from JVP fisheries. However, a better and equally practical analytical approach is not apparent.

National Standard 4 prohibits management measures from discriminating between residents of different states and requires any allocation of fishing privileges to be fair and equitable, to promote conservation, and be carried out so that no particular individual, corporation or other entity acquires an excessive share of such privileges. The bycatch restrictions of this rule do not discriminate between residents of different states as trawl fishermen from all states are equally burdened to operate within the specified PSC limits.

Inherent in any allocation is the advantaging of one group to the detriment of another. To be fair and equitable, an allocation of fishing privileges should be rationally connected to the achievement of optimum yield and to an objective of an approved fishery management plan. For the reasons discussed in response to the previous comment, NOAA believes that the bycatch control measures imposed by this rule enhance the achievement of the optimum yield to the red king and *C. bairdi* Tanner crab fisheries while not necessarily preventing achievement of the groundfish optimum yield. Hence, these bycatch control measures are rationally connected to the achievement of the optimum yields of crabs and groundfish. Moreover, they serve to carry out one of the expressed management objectives of the FMP, that is, to minimize the impact of groundfish fisheries on prohibited species such as crabs and halibut (FMP at section 14.1).

In addition, an allocation scheme may promote conservation (in the sense of wise use) by optimizing yield in terms of size, value, market mix, price, or economic or social benefit of the product. The observed bycatch of crabs and halibut in the groundfish trawl fishery is composed mostly of small, pre-recruit animals. By catching and discarding these animals with probable 100 percent mortality, the groundfish fishery preempts the productive use of the discards in the crab and halibut fisheries and the associated economic and social benefits. On the other hand, PSC limits that prevent harvesting the groundfish optimum yield when every effort is made by that fishery to avoid excessive bycatches also would not be considered wise use of the crab and halibut resources. This is the essence of the allocative balance between allowing relatively unconstrained fishing for groundfish with trawl gear and limiting that fishery's use of other resources that may have potentially adverse affects on other fisheries. After lengthy debate and study, the Council appears to have made a reasonable management recommendation that strikes an appropriate balance between these competing interests.

NOAA recognizes the difficult judgement necessary in making such allocative management decisions. By implementing the Council's bycatch control recommendations in Amendment 12a, NOAA is not making any assumption that the trawl fleet is the culprit in the bycatch issue. Although it is true that about 82 percent of the catcher vessels with current Federal permits to harvest groundfish off Alaska operate longline (pots and hooks) gear, about 92 percent of the groundfish harvest through June 10, 1989 has been taken by trawl gear. While bycatch data on the groundfish longline fisheries are scant, based on the relative distribution of groundfish harvest among gear types it may be assumed that trawl gear takes most of the total prohibited species bycatch taken in all groundfish fisheries.

The bycatch of red king crabs in the *C. bairdi* Tanner crab fishery also is

acknowledged along with the bycatch of female and small male red king crabs in the red king crab fishery. The control of such bycatches is properly done by the State of Alaska Department of Fish and Game (ADF&G) in cooperation with the Council under terms of the fishery management plan for Bering Sea crabs. The ADF&G closed the Tanner crab fishery in the Bering Sea on May 7, 1989 partly because of excessive red king crab bycatches (ADF&G emergency order no. 4–S–09–89). Other reasons included the imminent molting period during which time bycatch mortality increases, and a lower than expected catch per unit effort. Further, a complete closure of the red king crab fishery is possible due to the current severe low abundance of this species although this decision will not be made by the ADF&G until after the 1989 crab survey is complete. Hence, NOAA does not perceive an unfair bycatch regulatory burden being imposed on trawlers. Moreover, the focus on this rule is control of the bycatch effects of one fishery on others, i.e., the effect of the groundfish trawl fishery on crab and halibut fisheries. Bycatches of crabs in the crab fishery and of groundfish in the groundfish fishery also may be problems on which the Council may make regulatory recommendations to the Secretary in the future.

Comment 3: The boundaries of the closed area are inappropriately specified, the northern boundary being too far north and the eastern boundary being too far east. Seasonal expansion of the closed area is unjustified and was established by the Council without opportunity for public comment. Midwater trawling should be exempt from the area closed to all trawl gear since midwater trawl gear accounts for little bycatch of crabs and halibut. For halibut conservation purposes there is no need for a year-round area closure.

Response: NOAA acknowledges that crabs and halibut in the area closed to fishing with trawl gear under § 675.22 probably move in and out of the area. Exactly how many crabs and halibut are protected at any one time from encountering trawl gear within this area is unknown. Based on the 1988 crab survey, the area south of 58°00′ N. latitude and between 160°00′ and 162°00′ W. longitude contained about 22 percent of the red king crab population. Of this amount, an estimated 37 percent were mature males (110–199mm) and 38 percent were mature females (90–199mm). Surveys in earlier years showed larger proportions of the red king crab population within the closed area indicating that crab distribution will vary between years. The 1989 crab survey may indicate an increase or decrease in the proportions of the total red king crab population encompassed by the closed area boundaries. However, NOAA finds that current data indicate that a significant portion of the population of this crab species is protected by the closed area.

The seasonal expansion of the closed area to 163°00′ W. longitude will bring an additional 52.3 percent of the total red king crab population under protection during the critical molting and mating period when their shells are soft and more vulnerable to damage from trawl gear. Shifting the northern boundary of this area one half degree latitude south and the eastern boundary one degree longitude west would remove about 15 percent of the total red king crab population from the protection of the closed area. While this is not a large portion of the total population, it would constitute a significant dilution of the protective effect of the closed area for red king crabs.

The Council decided to expand the closed area, after receiving public testimony, on the basis of scientific response to questions developed during Council discussion. NOAA does not find that such a discovery process obviates public comment during the rulemaking process and further that the public has been afforded additional comment opportunity during the public review of the proposed rule.

As its name implies, midwater or off-bottom trawl gear usually does not operate in contact with the sea bottom where crabs live. Therefore, such trawl gear often has substantially lower bycatch rates than bottom trawl gear. This appears especially true when midwater gear is used during the first four months of the year to harvest pollock in spawning aggregations. However, midwater trawl gear can be rigged at other times to catch fish very close to the sea bottom, for example, pollock in more dispersed feeding schools during the summer. The bycatch rates of midwater gear operated close to the bottom may be significantly higher than when the gear is operated higher in the water column. As such, there is no way for NOAA to verify whether any particular midwater trawl is being operated at a depth which will minimize its bycatch. NOAA, therefore, has no reason to change the constraint on using midwater trawl gear in the closed area.

NOAA agrees that halibut are widely distributed on the Bering Sea continental shelf and that the closed area by itself offers little overall bycatch protection to halibut. However, the closed area includes an area north of the Alaska Peninsula in which juvenile halibut are particularly abundant. Any relocation of the trawl fleet to other areas that contain older fish would serve to decrease the effect of trawl bycatches on recruitment to the halibut fishery. Any benefits of the closed area in this regard are highly uncertain, however. The principal purpose of the closed area is the protection of red king crabs and, to a lesser extent, *C. bairdi* Tanner crabs and halibut.

Comment 4: The 1989 JVP fishery has left the DAP fishery with too little king crab PSC limit relative to its uncaught groundfish quota.

Response: The JVP fisheries in 1989 to date have operated from January 1 through March 12. Preliminary observer data from these fisheries indicate that a total 175,657 red king and 153,371 *C. bairdi* Tanner crabs were taken in Zone 1. An additional 82,729 *C. bairdi* Tanner crabs were taken in Zone 2 and 560 mt of halibut were taken in the BSAI area. Any of these bycatch amounts that meet or exceed the specified PSC allowances for the two JVP fisheries will trigger appropriate area closures; however, the rule does not provide for deducting bycatches in excess of a PSC allowance from other PSC allowances. Hence, DAP fisheries will be unaffected by excessive bycatches in, for example, the JVP flatfish fishery, because DAP estimated red king crab bycatch would be counted retroactively against the PSC apportionment of the DAP flatfish fishery. This provision implements the intent of the Council not to sanction all fisheries with an area closure due to the excessive bycatches of a single fishery.

Ordinarily, bycatches of the four fisheries would not exceed their respective PSC allowances because their attainment would trigger area closures. Since the sum of the PSC allowances equals the PSC limit for a species, prompt closures would ensure that PSC limits also will not be exceeded. Due to the effective date of this rule late in the 1989 fishing year, however, some PSC allowances may be exceeded. The amounts by which PSC allowances are exceeded in 1989, if at all, are not expected to be significantly damaging to the biological welfare of crabs and halibut or the economic welfare of crab and halibut fisheries.

Comment 5: Without requiring observers on DAP fishing vessels, estimates of bycatch in the DAP fisheries will be faulty due to:

(a) Reliance on voluntary submission of catch data,

(b) Estimates of DAP bycatch based on extrapolation from JVP bycatch data

from earlier years when JVP fishing behavior was modified by incentives not applicable to DAP, and

(c) Large error inherent in estimator calculations. How does such voluntary compliance and extrapolation of bycatch rates to DAP fisheries prevent overfishing and comply with National Standard 2? The system of accounting for DAP bycatches will confer an excessive privilege on DAP fishermen compared with JVP fishermen. Amendment 12A should be changed to include a comprehensive observer requirement and incentives to reduce bycatches at the company or individual vessel levels.

Response: NOAA agrees that full observer coverage on all fishing vessels sorting trawl-caught groundfish, as is currently the case in JVP fisheries, provides the most accurate estimate of prohibited species bycatch. Such observer coverage on DAP fishing vessels currently is not available. NOAA believes, however, that realistic estimates of DAP bycatches can be derived from a variety of other data sources. One of these sources is the DAP catch data reports. These reports are required under § 675.5 and are not voluntary. Catches and receipts of groundfish by catcher/processor and mothership/processor vessels are submitted weekly by the vessel operator and are corroborated by unannounced inspections at sea and by State of Alaska fish tickets which are required of all vessels fishing off Alaska. All catcher/processor and mothership/processor vessels also must check in and out of each statistical area in which they operate. NOAA scientists will estimate unobserved DAP bycatches based on the species composition of harvested groundfish, the time and location of harvests, comparison with known bycatch rates from previous similar fisheries, and any other relevant data. This may involve extrapolation from JVP bycatch data from earlier years. NOAA acknowledges the statistical limitations and implications of this approach. It will be consistent with National Standard 2, however, if it is based on the best available scientific information.

Any estimation of the amount of crabs and halibut taken as bycatch will be subject to error. Bycatch estimates of unobserved catches probably will have a greater error than observed catches. The NMFS, therefore, will make conservative assumptions in determining whether a DAP fishery has attained its PSC apportionment. In addition, the NMFS intends to make ample use of the marine resource observers authorized under the Marine Mammal Protection Act to substantiate estimates of DAP bycatch rates as the DAP fisheries are being conducted. Hence, the system used to estimate unobserved DAP bycatches is not likely to permit DAP fisheries to have significantly larger bycatches than their PSC allowances. NOAA agrees, however, that this system, although adequate in this situation, is not perfect and does not provide sufficient incentive for individual vessel operators to reduce their bycatch of prohibited species. NOAA will encourage the Council to this end as it prepares future bycatch management recommendations to succeed Amendment 12a.

Comment 6: At sea enforcement will be difficult and sometimes impossible. All DAP vessels should be required to maintain daily catch logs, offload all product when any one area is closed to one DAP fishery and not the other, or the fisheries should be defined on a tow-by-tow and retained-on-board basis.

Response: NOAA acknowledges that the assignment of prohibited species bycatches to one of the four defined fisheries based on weekly catch reports cannot be verified at sea. Closure of one DAP (or JVP) fishery and not the other will be enforced through the use of the directed fishing definition (§ 675.2). For example, when the "DAP flatfish fishery" attains its PSC allowance of red king crab in Zone 1, then the Secretary would prohibit DAP directed fishing for yellowfin sole, rock sole, and "other flatfish" for the remainder of the fishing year in Zone 1. According to the directed fishing definition, such a prohibition would mean that any DAP fishing vessel in Zone 1 would be in violation if it were found to have retained yellowfin sole, rock sole, and "other flatfish," in the aggregate, amounting to 20 percent or more of the total amount of fish and fish products on board, as calculated in round-weight equivalents. NOAA agrees also that the maintenance of daily catch logs would document when and where catches of groundfish were made by a DAP fishing vessel. Although the Council has recommended requiring daily catch and production logs to be implemented for the 1990 fishing year, they currently are not required.

Comment 7: Closure of Zones 1 and 2H to a fishery on attainment of its primary halibut PSC allowance will be of minimal value in controlling the effects of halibut bycatch. Bycatch management for halibut should emphasize actual removals on a BSAI-wide basis. The PSC limit for halibut is too high. It would be increased from 1,325 mt under Amendment 10 to 5,333 mt under Amendment 12a at a time when the exploitable biomass of halibut appears to be declining at about 5 percent per year. The Alaska-wide halibut bycatch mortality should not exceed 6,000 mt since this is the 10-year average under which the halibut resource has rebuilt itself from previous declines. The halibut PSC allowances for the DAP fisheries should be monitored by using a predictive model in the absence of on-board observers. Bycatch controls should incorporate incentives for individual fishermen to reduce bycatch rates.

Response: NOAA is aware of recent scientific work suggesting that species composition of the groundfish catch has the single most important influence on halibut bycatch rates. This work appears to discount previous information showing the distribution of juvenile halibut. The recommendation to close Zones 1 and 2H at some primary level of bycatch was based in part on this distribution information. Although the biological value to halibut of closing these zones to groundfish fishing at certain times remains to be seen, such closures may have value also in the protection of other prohibited species and in providing incentive for groundfish fishermen to avoid bycatches of halibut. NOAA agrees that this approach does not provide ideal incentives to the individual vessel operator, and will consider such an approach in the future.

The principal reason why the halibut PSC limit is higher than it was under Amendment 10 (implemented in 1987 and 1988 at 52 FR 8592, March 19, 1987) is that the bycatch of more groundfish fisheries is being counted against the PSC limit than was done under Amendment 10. NOAA finds the goal of an Alaska-wide halibut bycatch of 6,000 mt reasonable, but notes that any significant increase in bycatch is likely to be reflected in a reduction of catch limits for halibut fishermen in future years. Although this may not be a desirable effect, it is in the judgment of the Council and the Secretary, a reasonable balance between excessive bycatch and prohibitive bycatch control. At lower levels of halibut biomass, this balance may more reasonably be struck at a PSC limit less than 6,000 mt Alaska-wide or 5,333 mt for the BSAI area.

Comment 8: What amount of bycatch of crabs would be considered statistically and biologically significant? The PSC limits for crab species should be established at 1 percent or 2 percent of the total crab population.

Response: A key feature of the controversy over the establishment of crab PSC limits was the biological significance of crab bycatch mortality to the overall crab population. The Council's Scientific and Statistical Committee advised that, with current crab survey methods, a removal of 1 percent of the total population of a crab species would not be detected. Trawl fishing interests who had proposed 1 percent of the population as a PSC limit interpreted this advice as confirmation of a biologically acceptable bycatch amount.

In 1988, the total red king crab population was estimated to be about 40 million animals. The precision of this estimate, however, is such that the true abundance of red king crabs in 1988 had a 95 percent probability of being within the range of 21 million to 59 million animals. With this kind of precision, the removal of the 1 percent PSC limit of 400,000 animals probably would not be statistically significant. However, at very low population levels, say the lower end of the probable abundance range, 400,000 animals may be biologically meaningful to the regenerative potential of the stock. Clearly, there is no simple biologically or scientifically "correct" PSC limit. Instead, the best PSC limit is the one that strikes the best balance between excessive bycatch and prohibitive regulation. These are admittedly qualitative terms that suggest some optimum among competing objectives. NOAA suggests that this optimum is practically impossible to discover or prove scientifically.

Comment 9: There should be provision for reapportionment of PSC allowances among fisheries concurrent with the reapportionment of TAC between JVP and DAP.

Response: NOAA agrees. Such authority was contemplated in the proposed rule at § 675.20(e)(4) and discussed in the preamble to the proposed rule (page 19201, center column at 54 FR 19199, May 4, 1989). To clarify this intent, however, the language of § 675.20(e)(4) has been slightly revised in the final rule.

Comment 10: Amendment 12A complies with the National Standards of the Magnuson Act and should be approved. Domestic trawling is supposed to be closely monitored in the winter halibut saving area according to the FMP. Since the bycatch of halibut tends to be of juvenile animals, the impact on the commercial halibut fishery will be delayed two to four years. Halibut bycatch was reduced by foreign fleets even with an increasing halibut population. Therefore, Amendment 12a is not overly restrictive and should be implemented.

Response: Comment noted.

Classification

The Regional Director has determined the FMP Amendment 12a is necessary for the conservation and management of the BSAI area groundfish fisheries and that this amendment is consistent with the provisions of the Magnuson Act, and other applicable law.

The Council prepared an environmental assessment (EA) for these amendments. The Assistant Administrator for Fisheries concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA may be obtained from the Council at the address above.

The Under Secretary of Commerce for Oceans and Atmosphere of NOAA (Under Secretary) determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/FRFA prepared by the Council which concluded that past industry performance and public testimony indicate that the trawl fisheries will be able to reduce their bycatch rates of halibut and crab and avoid early closures. Although some scenarios discussed in the RIR, projected profit losses to the trawl fisheries in excess of $100 million, NOAA believes that the groundfish trawl fishing fleet will respond to the potential for lost revenues by modifying fishing patterns to reduce bycatch rates, thereby mitigating any negative impacts on their profits. A copy of the EA/RIR/IRFA may be obtained from the Council at the address above.

The Under Secretary concludes that this rule would have significant effects on small entities. These effects have been discussed in the EA/RIR/IRFA, a copy of which may be obtained from the Council at the address above. The Under Secretary determined that this rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies failed to comment within the statutory time period.

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

List of Subjects

50 CFR Part 611

Fisheries, Foreign fishing.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: August 4, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 611 and 675 are proposed to be amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. Section 611.93 is amended by adding paragraph (b)(5) effective through December 31, 1990, to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * *

(5) *Receiving groundfish prohibited.* (i) Whether or not a nation receives a notice under paragraph (b)(3)(ii) of this section, receipts of U.S.-harvested groundfish that are composed of yellowfin sole, rock sole, and "other flatfish" in the aggregate in any amount greater than or equal to 20 percent of the total amount of groundfish received is prohibited in any bycatch limitation zone or statistical area defined in § 675.2 of this Title when the JVP bycatch allowance pertaining to such bycatch limitation zone or statistical area, as specified under § 675.21 of this Title, has been attained.

(ii) Whether or not a nation receives a notice under paragraph (b)(3)(ii) of this section, receipts of U.S.-harvested groundfish that are caught with bottom trawl gear and composed of pollock and Pacific cod in the aggregate in any amount greater than or equal to 20 percent of the total amount of groundfish received is prohibited in any bycatch limitation zone or area defined in § 675.2 of this Title when the bycatch allowance pertaining to such bycatch limitation zone or statistical area, as specified under § 675.21 of this Title, has been attained.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS

3. The authority citation for 50 CFR part 675 continues to read as follows:

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

4. In § 675.2, two new definitions, *Bottom trawl* and *Bycatch limitation zone 2H* are added in alphabetical order, the definitions, "Bycatch limitation zone 1 (Zone 1)" and "Bycatch limitation zone 2 (Zone 2)" are revised and the definition of "statistical area" is amended by revising the introductory text, redesignating paragraphs (f), (g), (h), and (i) as (h), (i), (j), and (k) respectively, and adding new paragraphs (f) and (g), effective through December 31, 1990, to read as follows:

§ 675.2 Definitions.

* * * * *

Bottom trawl means a trawl in which the ground rope of the net is equipped with bobbins or roller gear.

Bycatch limitation zone 1 (Zone 1) means that part of the Bering Sea Subarea that is south of 58°00′ N. latitude and east of 165°00′ W. longitude (Figure 2).

Bycatch limitation zone 2 (Zone 2) means that part of the Bering Sea Subarea bounded by straight lines connecting the following coordinates in the order listed (Figure 2):

North latitude	West longitude
54°30′	165°00′
58°00′	165°00′
58°00′	171°00′
60°00′	171°00′
60°00′	179°20′
59°25′	179°20′
54°30′	167°00′
54°30′	165°00′

Bycatch limitation zone 2H means that part of the Bering Sea Subarea bounded by sraight lines connecting the following coordinates (Figure 2):

North latitude	West longitude
54°30′	165°00′
56°00′	165°00′
56°30′	170°00′
55°42′	170°00′
54°30′	167°00′
54°30′	165°00′

* * * * *

Statistical area means any one of the eleven statistical areas of the Bering Sea and Aleutian Islands management area defined as follows (Figure 2):

* * * * *

(f) Statistical area 516—that part of Statistical area 511 that is south of 58° N. lat. and between 162° and 163° W. long.;

(g) Statistical area 517—that part of Statistical area 513 that is south of 56°30′ N. lat. and between 165° and 170° W. long.;

* * * * *

5. In § 675.7, paragraph (c) is revised and new paragraph (d) is added, effective through December 31, 1990, to read as follows:

§ 675.7 Prohibitions.

* * * * *

(c) Use a vessel:

(1) To fish with trawl gear in that part of Zone 1 closed to fishing with trawl gear in violation of § 675.22(a) of this part unless specifically allowed by the Secretary as provided under § 675.22 (b), (c), and (d) of this part;

(2) To fish with trawl gear in that part of Zone 1 closed to fishing with trawl gear at any time when no scientific data collection and monitoring program exists or after such a program has been terminated; or

(3) To fish with trawl gear in that part of Zone 1 closed to fishing with trawl gear without complying fully with a scientific data collection and monitoring program; or

(d) conduct any fishing contrary to a notice issued under § 675.21 of this part.

6. In § 675.20, effective through December 31, 1990, add the phrase "or PSC allowance" after the phrase "PSC limits" in paragraph (e)(1)(iii) and after the phrase "PSC limit' in both places where it appears in paragraph (e)(2)(ii).

7. In § 675.20, paragraph (e)(4) is revised, effective through December 31, 1990, to read as follows:

§ 675.20 General limitations.

* * * * *

(e) * * *

(4) The adjustment of TAC or PSC limit or PSC allowance for any species under paragraph (e)(1)(iii) of this section must be based on the best available scientific information concerning the biological stock status and harvest of the species in question and on the Regional Director's determination that the currently specified TAC or PSC limit or PSC allowance is incorrect. Any adjustment to a TAC or PSC limit or PSC allowance must be reasonably related to a change in biological stock status, except that a PSC limit or PSC allowance may be adjusted if it was incorrectly specified or to allow redistribution of uncaught PSC allowances among fisheries.

8. A new § 675.21 and Table 2 are added, effective through December 31, 1990, to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

(a) *PSC limits.* (1) The PSC limit of red king crab caught while conducting any domestic trawl fishery for groundfish in Zone 1 during any fishing year is 200,000 red king crabs.

(2) The PSC limit of Tanner crab (*C. bairdi*) caught while conducting any domestic travel fishery for groundfish in Zone 1 during any fishing year is 1 million animals.

(3) The PSC limit of Tanner crab (*C. bairdi*) caught while conducting any domestic fishery for groundfish in Zone 2 during any fishing year is 3 million animals.

(4) The primary PSC limit of Pacific halibut caught while conducting any domestic fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during any fishing year is an amount of Pacific halibut equivalent to 4,400 metric tons.

(5) The secondary PSC limit of Pacific halibut caught while conducting any domestic fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during any fishing year is an amount of Pacific halibut equivalent to 5,333 metric tons.

(b) *Apportionment of PSC limits.* (1) The Secretary, after consultation with the North Pacific Fishery Management Council (Council), will apportion each PSC limit into bycatch allowances that will be assigned to each fishery, specified in paragraph (b)(3) of this section, according to its anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified through the use of a mathematical prediction procedure based on statistical information derived from fishery performance in previous years and expectations of projected performances of the fisheries.

(2) The Secretary will publish PSC limits and PSC allowances annually in the notices required under § 675.20(a)(6) of this part. Public comment will be accepted by the Secretary for a period of 30 days after the first publication of the amounts. See Table 2 for purposes of this paragraph.

(3) For purposes of this section, four domestic fisheries are defined as follows:

(i) "DAP flatfish fishery" means DAP fishing operations which retain, on a weekly basis, yellowfin sole, rock sole, and "other flatfish" in the aggregate in

an amount greater than or equal to 20 percent of the total amount of groundfish retained.

(ii) "DAP other fishery" means DAP fishing operations which retain, on a weekly basis, any combination of groundfish species which does not qualify the fishery as a "flatfish fishery."

(iii) "JVP flatfish fishery" means JVP fishing operations which deliver, on a weekly basis, yellowfin sole, rock sole, and "other flatfish" in the aggregate in an amount greater than or equal to 20 percent of the total amount of groundfish delivered.

(iv) "JVP other fishery" means JVP fishing operations which deliver, on a weekly basis, any combination of groundfish species which does not qualify the fishery as a 'flatfish fishery."

(c) *"Attainment of a PSC allowance.*

(1) By the "DAP flatfish fishery."

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances or red king crab or *C. bairdi* in Zone 1 while participating in the "DAP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for yellowfin sole, rock sole, and "other flatfish" in the aggregate in Zone 1 by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance of *C. bairdi* in Zone 2 while participating in the "DAP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for yellowfin sole, rock sole, and "other flatfish" in the aggregate in Zone 2 by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP" flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for yellowfin sole, rock sole, and "other flatfish" in the aggregate in Zones 1 and 2H by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for yellowfin sole, rock sole, and "other flatfish" in the aggregate in the entire Bering Sea and Aleutian Islands Management Area by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(2) By the "DAP other fisheries."

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances of red king crab of *C. bairdi* in Zone 1 while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with bottom trawl gear in Zone 1 by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance of *C. bairdi* in Zone 2 while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with bottom trawl gear in Zone 2 by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with bottom trawl gear in Zones 1 and 2H by U.S. fishing vessels that process their catch on board or deliver it to U.S processors.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, directed fishing for pollock and Pacific cod in the aggregate with bottom trawl gear in the entire Bering Sea and Aleutian Islands Management Area by U.S. fishing vessels that process their catch on board or deliver it to U.S. processors.

(3) By the "JVP flatfish fishery."

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances of red king crab or *C. bairdi* in Zone 1 while participating in the "JVP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zone 1 that is composed of 20 percent or more yellowfin sole, rock sole, and "other flatfish" in the aggregate.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance of *C. bairdi* in Zone 2 while participating in the "JVP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zone 2 that is composed of 20 percent or more yellowfin sole, rock sole, and "other flatfish" in the aggregate.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while anticipating in the "JVP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zones 1 and 2H that is composed of 20 percent or more yellowfin sole, rock sole, and "other flatfish" in the aggregate.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "JVP flatfish fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught in the entire Bering Sea and Aleutian Islands Management Area that is composed of 20 percent or more yellowfin sole, rock sole, and "other flatfish" in the aggregate.

(4) By the "JVP other fisheries."

(i) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch either of the PSC allowances of red king crab or *C. bairdi* in Zone 1 while participating in the "JVP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of

the fishing year, the receipt by foreign vessels of groundfish caught from Zone 1 with bottom trawl gear that is composed of 20 percent or more pollock and Pacific cod in the aggregate.

(ii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance of *C. bairdi* in Zone 2 while participating in the "JVP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zone 2 with bottom trawl gear that is composed of 20 percent or more pollock and Pacific cod in the aggregate.

(iii) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the primary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "JVP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught from Zones 1 and 2H with bottom trawl gear that is composed of 20 percent or more pollock and Pacific cod in the aggregate.

(iv) If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the secondary PSC allowance of Pacific halibut in the Bering Sea and Aleutian Islands Management Area while participating in the "JVP other fishery," the Secretary will publish a notice in the **Federal Register** prohibiting, for the remainder of the fishing year, the receipt by foreign vessels of groundfish caught in the entire Bering Sea and Aleutian Islands Management Area with bottom trawl gear that is composed of 20 percent or more pollock and Pacific cod in the aggregate.

TABLE 2.—1989 PROHIBITED SPECIES CATCH ALLOWANCES

Fisheries	Zone 1	Zone 2	Zone 1+2H primary	BSAI-wide secondary
Red king crab, animals:				
DAP flatfish fisheries	50,579			
DAP other fisheries	20,879			
JVP flatfish fisheries	111,858			
JVP other fisheries	16,684			
C. bairdi Tanner crab, animals:				
DAP flatfish fisheries	86,970	260,910		
DAP other fisheries	609,519	1,828,558		
JVP flatfish fisheries	93,359	280,077		
JVP other fisheries	210,152	630,455		
Pacific halibut, metric tons:				
DAP flatfish fisheries			181	220
DAP other fisheries			3,408	4,131
JVP flatfish fisheries			146	177
JVP other fisheries			665	805

9. A new § 675.22 is added effective through December 31, 1990, to read as follows:

§ 675.22 Time and area closures.

(a) No fishing with trawl gear is allowed at any time in that part of Zone 1 in the Bering Sea Subarea that is south of 58° 00′ N. latitude and between 160° 00′ W. longitude and 162° 00′ W. longitude (see Figure 2) except as described in paragraph (c) of this section.

(b) No fishing with trawl gear is allowed at any time in that part of Zone 1 in the Bering Sea Subarea that is south of 58° 00′ N. latitude and between 162° 00′ W. longitude and 163° W. longitude during the period March 15 through June 15 except as described in paragraph (d) of this section.

(c) The Secretary may allow fishing for Pacific cod with trawl gear in that portion of the area described in paragraph (a) of this section that lies south of a straight line connecting the coordinates 56° 43′ N. latitude, 160° 00′ W. longitude, and 56° 00′ N. latitude 162° 00′ W.longitude, provided that such fishing is in compliance with a scientific data collection and monitoring program, established by the Regional Director after consultation with the Council, designed to provide data useful in the management of the trawl fishery, the Pacific halibut, Tanner crab and king crab fisheries, and to prevent overfishing of the Pacific halibut, Tanner and king crab stocks in the area.

(d) During the period March 15 through June 15, the Secretary may allow fishing for Pacific cod with trawl gear in that portion of the area described in paragraph (b) of this section that lies south of a line connecting 56° 00′ N. latitude, 162° W. longitude, and 55° 38′ N. latitude 163° 00′ W. longitude, provided that such fishing is in compliance with a scientific data collection and monitoring program, established by the Regional Director after consultation with the Council, designed to provide data useful in the management of the trawl fishery, the Pacific halibut, Tanner crab and king crab fisheries, and to prevent overfishing of the Pacific halibut, Tanner and king crab stocks in the area.

(e) If the Regional Director determines that vessels fishing with trawl gear in the areas described in paragraphs (a) and (b) of this section will catch the PSC limit of 12,000 red king crabs, he will immediately prohibit all fishing with trawl gear in those areas by notice in the **Federal Register.**

10. Figure 2 is revised, effective through December 31, 1990 and placed at the end of this part 675 to read as follows:

BILLING CODE 3510-22-M

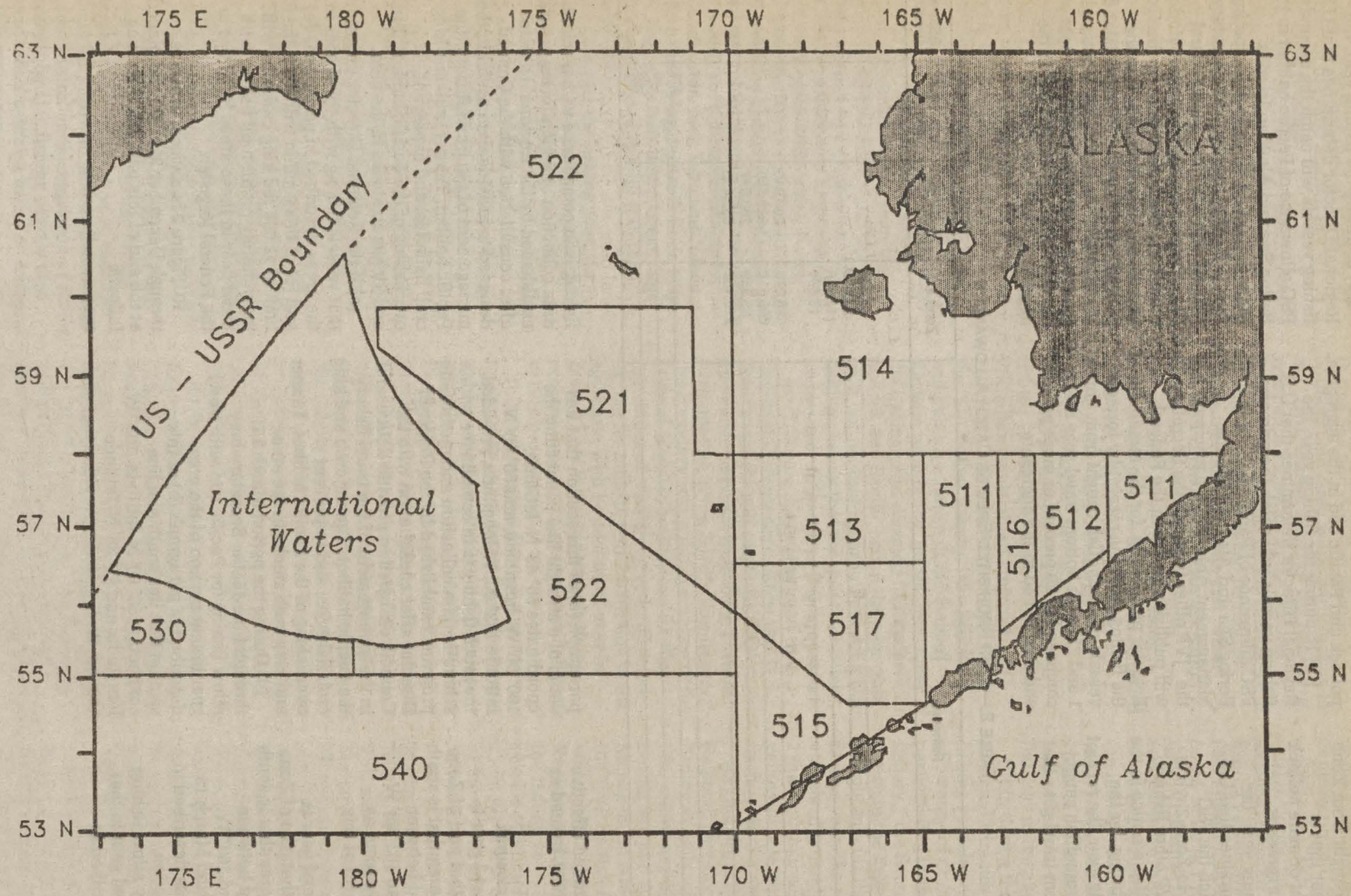


Figure 2. Statistical reporting areas in the BS/AI (Amendment 12A)

Bycatch protection zones: Zone 1 = 511 + 512 + 516
Zone 2 = 513 + 517 + 521
Zone 2H = 517

[FR Doc. 89–18612 Filed 8–4–89; 3:34 pm]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 54, No. 152
Wednesday, August 9, 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 Chapter I

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 second quarter, April through June, 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. 2, 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 27th day of July 1989.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

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

[FR Doc. 89–18600 Filed 8–8–89; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 12

[Docket No. 89–9]

Recordkeeping Requirements for Securities Transactions

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend 12 CFR Part 12, which establishes recordkeeping and confirmation requirements for securities transactions undertaken by a national bank for its customers. The proposal would broaden an exemption from requirements that banks maintain certain records and establish certain written policies and procedures. Under the proposal, the current exemption for banks with an average of less than 200 securities transactions per year would be expanded to 1,000 transactions per year. The purpose of broadening the exemption from 200 transactions per year to 1,000 transactions per year is to reduce the regulatory burden on banks of all sizes that engage in a low number of securities transactions per year.

DATE: Comments must be received by October 10, 1989.

ADDRESS: Comments should be directed to: Communications Division, 5th Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219, Attention: Docket No. 89–9.

Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: John Kerr, National Bank Examiner, Investment Securities Division, Office of the Comptroller of the Currency, Washington, DC 20219, (202) 447–1901.

SUPPLEMENTARY INFORMATION:

Background

Under 12 CFR 12.3 and 12.6, every national bank effecting securities transactions for customers is required to maintain specified types of records and to establish specified written policies and procedures. However, § 12.7(a) provides a partial exemption from these recordkeeping and written policy requirements for national banks having an average of less than 200 securities transactions per year for customers over the prior three calendar year period, excluding transactions in U.S. government and federal agency obligations.

Thus, a national bank falling within the current 200 transactions per year exemption does not have to maintain, among other things, detailed account records for each customer; order tickets for each purchase or sale of securities showing details of the transaction; or a record of all broker/dealers selected by the bank to effect securities transactions. Additionally, an exempt national bank does not have to establish written policies and procedures for: (1) Assigning responsibility for supervising employees who execute securities transactions or transmit orders to broker/dealers; (2) assigning the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time; and (3) crossing buy and sell orders on a fair and equitable basis.

This does not mean that an exempt national bank can forego maintaining records or establishing policies completely. Exempt national banks must maintain chronological records of original entry containing an itemized daily record of all purchases and sales of securities including the account or customer name, a description of the security, price, trade date and name of person from whom purchased or to whom sold. Exempt national banks must establish written policies requiring reporting of certain transactions to the bank by bank officers and employees who make or participate in the determination of investment recommendations or decisions for the accounts of customers. See 12 CFR 12.3(a) and 12.6(d). In addition, the bank must send a confirmation as prescribed by § 12.4.

The OCC adopted the 200 transaction low activity threshold exception in § 12.7(a) when it initially promulgated 12 CFR Part 12. See 44 FR 43252 (1979). Subsequently, the exception was revised to exclude transactions in U.S. government and federal agency securities from the total number of securities transactions executed and to exempt banks that do not exceed the low activity transaction threshold from the written policy and procedure requirements of §§ 12.6(a)–(c). See 44 FR 77137 (1979).

Comparable regulations were adopted concurrently by the Federal Reserve Board in 12 CFR 208.8(k) with a similar 200 transaction per year exemption in § 208.8(k)(6)(i), and by the Federal Deposit Insurance Corporation in 12 CFR 344 with a similar exemption in § 344.7(a).

Proposal

To reduce the burden and attendant expense imposed on banks by these recordkeeping and written policy and procedure requirements, OCC is proposing to raise the current exemption threshold from 200 to 1,000 securities transactions per calendar year. In effect, a national bank with an average of approximately four transactions per business day would be exempted. Small banks and banks with small securities brokerage operations are expected to be the principal beneficiaries of this amendment.

Few small national banks exceed 1,000 securities transactions per year. The 1,000 transaction threshold would ease the burden on approximately 1,500 national banks with under $1 billion in assets. Banks that have 1,000 or more securities transactions per year, usually national banks with $1 billion or more in assets, would not be affected by this proposal.

OCC requests comment on whether 1,000 transactions is an appropriate threshold figure, and whether a 1,000 threshold will afford adequate protection to investors who purchase and sell securities through national banks.

Some banks with a low volume of securities transactions offer the service primarily as an accommodation to their customers. OCC has received no substantive complaints from bank customers using the securities services of banks for which the 200 transaction exemption is available.

The OCC is not proposing any change in the recordkeeping and written policy requirements in §§ 12.3(a) and 12.6(d) or in the written confirmation requirements in § 12.4. These requirements, described above, will remain in effect for all national banks that effect securities transactions for customers.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is certified that this amendment will not have a substantial economic impact on a significant number of small entities. Small entities are the primary beneficiaries of this burden-reducing amendment, but the impact will not be substantial.

Excutive Order 12291

The OCC has determined that this amendment is not a "major rule" and therefore does not require a Regulatory Impact Analysis.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget under control number 1557–0142 for review in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h). Comments on the collection of information should be sent to the Comptroller of the Currency, Legislative and Regulatory Analysis Division, 5th Floor, 490 L'Enfant Plaza East, SW., Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1557–0142), Washington, DC 20503.

The collections of information in this regulation are set forth in 12 CFR 12.3, 12.4 and 12.6, and the exemption is set forth in 12 CFR 12.7(a). This information is needed to ensure national bank compliance with securities laws and to protect persons who purchase and sell securities through national banks. The likely respondents are for-profit institutions.

Estimated annual reporting burden for 12 CFR Part 12 is 165,001 burden hours. This proposal, if adopted as a final rule, will reduce the burden by an estimated 40,721 hours. The OCC estimates that 1,728 banks maintain records under 12 CFR Part 12. Small banks and banks with fewer than 1,000 transactions will be required to maintain fewer records and therefore are the primary beneficiaries of this burden reducing change.

The average burden will be approximately 72 hours per recordkeeper. Depending on the degree of activity and whether a bank falls under the proposed 1,000 transaction exemption, the actual burden per bank is estimated to range from approximately 4,600 hours annually for a large bank with numerous transactions to approximately three hours annually for a small bank with few transactions.

List of Subjects in 12 CFR Part 12

National banks, Banking, Securities transactions, Recordkeeping, Confirmation.

Authority and Issuance

For the reasons set forth in the preamble, Part 12 of Chapter I of Title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 12—[AMENDED]

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

Authority: 12 U.S.C. 24, 92a and 93a.

2. Section 12.7(a) is revised to read as follows:

§ 12.7 Exceptions.

(a) The requirements of §§ 12.3(b) through (d) and 12.6(a) through (c) shall not apply to banks having an average of less than 1,000 securities transactions per year for customers over the prior three calendar year period, exclusive of transactions in U.S. government and federal agency obligations.

* * * * *

Dated: August 2, 1989.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 89–18546 Filed 8–8–89; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL TRADE COMMISSION

16 CFR Part 4

Miscellaneous Rules

AGENCY: Federal Trade Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Trade Commission proposes to amend its rules concerning fees and fee waivers to reflect the amendments to the Freedom of Information Act ("FOIA"), as embodied in the Freedom of Information Reform Act of 1986 ("Reform Act"), and guidelines promulgated by the Office of Management and Budget pursuant to the Reform Act amendments. The proposed rule also reduces certain fees and increases others to reflect changes in, or more accurate information about, the costs of providing services, and authorizes the use of credit cards to pay fees.

In addition, the proposed rule makes all of the fee and fee waiver provisions applicable not only to FOIA requests,

but also to requests for public records and to requests from other government agencies seeking information for purposes other than law enforcement. To this end, Rule 4.8 is restructured to include all provisions generally relating to fees and fee waivers for agency records. Other provisions of the current rule, which pertain only to public records, are moved to Rule 4.9.

In addition to changes pertaining to fees and fee waivers, the proposed rule incorporates changes to conform Rule 4.10 ("Nonpublic records") to the provisions of the Reform Act that expand the exemption for investigative records, and that create new categories for records that are not subject to the FOIA.

DATE: Comments will be received until September 8, 1989.

ADDRESSES: Comments should be addressed to the Secretary, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580.

Comments will be entered on the public record of the Commission and will be available for public inspection in Room 130 at the above address during the hours of 9:00 a.m. until 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Keith Golden, Information Services Division, Federal Trade Commission, 6th & Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2410.

SUPPLEMENTARY INFORMATION:

I. Fees and Fee Waivers.

Under the proposed rule, all fee and fee waiver provisions generally applicable to requests for Commission records will appear in Rule 4.8; thus, certain provisions now embodied in Rule 4.11(a)(i)(1) will be incorporated into Rule 4.8. On the other hand, subsections (a) and (b) of Rule 4.8 (which are specifically applicable to public records) will be moved, in amended form, to Rule 4.9.

The Commission previously proposed changes to its fee and fee waiver provisions in 1986. 51 FR 32657. The 1986 proposal preceded and thus did not reflect the amendments to the FOIA fee and fee waiver provisions contained in the Reform Act. The Commission is therefore publishing this new proposal, reflecting both the 1986 amendments, Pub. L. 99–570, sections 1801–1804, and the guidelines promulgated by the Office of Management and Budget, 52 FR 10012–10020, for an additional comment period.

A. *Proposed Rule 4.8(a).* Proposed Rule 4.8(a) defines the terms "search," "duplication," "review," and "direct costs," consistent with the amended FOIA and OMB Guideline 6, 52 FR 10017.

B. *Proposed Rule 4.8(b)(1)–(3).* These provisions define four categories of requesters (commercial use requesters, educational requesters, non-commercial scientific institution requesters, and representatives of the news media), and establish a residual category for other requesters. The proposed definitions of the categories of requesters are consistent with the amended FOIA and OMB Guideline 6, 52 FR 10017–18. Consistent with the amended FOIA, the provisions also prescribe types of charge that will be imposed on each type of requester, and on requesters who fall into none of the categories. 5 U.S.C. 552(a)(4)(A)(ii), 552(a)(4)(A)(ii).

C. *Proposed Rule 4.8(b)(4).* Proposed Rule 4.8(b)(4) provides that charges that do not exceed $5.00 will be waived. A waiver provision of this nature is mandated by the amended FOIA, which requires a waiver "if the costs of routine collection or processing of the fee are likely to equal or exceed the amount of the fee." 5 U.S.C. 554(a)(4)(A)(iv)(I). *See also* OMB Guideline 7.f., 52 FR 10018–19. The $5.00 threshold is based on past Commission experience respecting the cost of assessing and collecting fees.

The current rule also contains a minimum fee provision, which provides that all charges that do not exceed a $10.00 threshold will be waived. 16 CFR 4.8(c)(1). The new provision will operate somewhat differently. Under the proposed rule, charges will be waived based only if that total cost is below the threshold (now $5.00). Thus, if total costs are $5.00, the requester will be billed nothing; on the other hand, if total costs are $6.00, the full amount will be billed.

D. *Proposed Rule 4.8(b)(5).* Proposed Rule 4.8(b)(5) provides that certain materials may be made available to all requesters without charge, and is consistent with current Rule 4.8(b), 16 CFR 4.8(b). For example, the Commission prints a number of copies of its decisions when they are issued. These decisions will be distributed without charge, to FOIA or other requesters, until the initial supply is exhausted.

E. *Proposed Rule 4.8(b)(6).* This provision, which establishes specific fees that will be charged to requesters under the FOIA, substantially revises the fee schedule in Rule 4.8(c)(2) of the current rule, 16 CFR 4.8(c)(2). Certain fees are raised to reflect increased costs; others are reduced to reflect diminished costs. Also, a new fee category is established for Express Mail Service, a service that will be available on request.

Consistent with existing Commission practice, most fees are described by a specific dollar figure. However, to increase flexibility in administering the fee provisions, search and review fees are described by a formula: quarter-hourly fees will be established for three categories of employees (clerical, attorney/economist, and other professional), based on the averge pay of employees in each class, increased by a 16 percent factor to reflect the cost of additional benefits accorded government employees. This formula is consistent with the OMB Guideline 7.a, 52 FR 10018 (providing for 16 percent adjustment to salary, and authorizing the use of an average rate). Further, the use of a formula in the text of the rule, as opposed to a specific dollar figure, is consistent with the practice of other agencies. *See, e.g.,* 5 CFR 1303.40 (OMB regulations). The current hourly fees for attorneys/economists, other professionals, and paralegals are $13.25, $6.15, and $5.50, respectfully. Under the proposed rule, they will rise to approximately $32.10, $23.70, and $13.20, respectfully.

F. *Proposed Rule 4.8(c).* Proposed Rule 4.8(c) provides that each public request for records should set forth whether the request is made for other than commercial purposes and whether the requester is an educational institution, a noncommercial scientific institution, or a representative of the news media. This information will enable the Deputy Executive Director initially, or the General Counsel or Commission on appeal, to apply the new fee provisions. If the information is lacking in a written request, the decisionmaker may use additional information provided by the requester, and any other relevant information, to determine the proper fee classification. When a request is made orally, the relevant information may be provided orally.

G. *Proposed Rule 4.8(d).* Proposed Rule 4.8(d) requires, with one exception, that an agreement to pay fees accompany all requests. The agreement may assert that the requester shall pay any fees that are incurred, or it may be limited to a specific dollar amount. The one exception is that, when a requester applies for a fee waiver, the request may state that the requester is unwilling to pay fees if the waiver is denied.

If such an agreement is lacking, and if the estimated fees exceed $25.00, the requester will be advised of the estimated fees and the request will not be processed until the requester agrees to pay the fees. The $25.00 figure in the proposed rule provision is consistent with the OMB Guidelines for

notification to a requester who has not agreed to pay charges. *See* Guideline 7.d (notice when duplication charges are likely to exceed $25.00); Guideline 9.a. (notice when search charges are likely to exceed $25.00). It is also consistent with Rule 4.11(a)(1)(i)(D) of the current rules of practice but, unlike the current rule, the proposed rule does not require that the agreement be in writing, and the provision is expressly applicable to all record requests from the public, and not only to requests under the FOIA.

H. *Proposed Rule 4.8(e).* Proposed Rule 4.8(e) provides for fee waivers in the public interest. The proposed rule describes the procedures to request a waiver, and sets forth a six-part test for fee waivers, similar to the six-part tests established by numerous other agencies. *See, e.g.,* 28 CFR 16.10(d) (Department of Justice); 49 CFR 7.97(d) (Department of Transportation).

The six-part test is based on two statutory standards under the Reform Act, which provide respectively that a fee waiver will be granted (1) "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government," and, (2) if disclosure "is not primarily in the commercial interest of the requester." The first four parts of the proposed six-part test are based closely on the first of these statutory provisions; the last two parts of the proposed six-part test are based closely on the second statutory provision.

The fee waiver provisions, like the other provisions of Proposed Rule 4.8, apply to requests for public records as well as requests for nonpublic records. As a practical matter, public records are readily available at the Commission's headquarters and, to a lesser extent, its regional offices, and fee waivers will rarely be granted for public records. However, the Commission believes that the fee waiver standards could be met by a requester who seeks public records, although the requester would have to show why the waiver would satisfy the relevant standards, including particularly the standard in Rule 4.8(e)(2)(i)(D), notwithstanding that the documents are already available to both the requester and the general public.

I. *Proposed Rule 4.8(f).* Proposed Rule 4.8(f) provides that fees may be charged for an unsuccesful search, i.e., a search in which no documents or only exempt documents were located. OMB Guideline 1, 52 FR 10017, specifically notes a Congressional intent that agencies recover their costs, and OMB Guideline 7.a, 52 FR 10019, specifically provides for recovering costs of unsuccessful searches. Consistent with this Guideline, Proposed Rule 4.8(d), discussed above, contains guidelines to insure that requesters consent to payment of fees when estimated costs exceed $25.00, and will operate to assure that requesters will be aware of possible charges for an unsuccessful search.

Consistent with OMB Guideline 7.a, the proposed rule states only that charges *may* be imposed for an unsuccessful search. Nevertheless, it is the Commission's intent that these charges generally will be imposed, except in unusual cases. Charges for unsuccessful searches, of course, will be subject to limitations applicable to all charges; i.e., requesters (other than commercial use requesters) will not be charged for the first two hours of search time (Proposed Rule 4.8(b) (2) and (3)), and requesters will not be billed if the total chargeable fees do not exceed $5.00 (Proposed Rule 4.8(b)(4)).

J. *Proposed Rule 4.8(g).* This provision authorizes aggregation of requests for purposes of determining the applicable fee. The Deputy Executive Director for Planning and Information (DEDPI) initially, or the General Counsel on appeal, may aggregate requests for purposes of fees when the DEDPI or General Counsel determines that a requester or a group of requesters is attempting to evade fees by dividing a single request into a series of smaller requests. *See* OMB Guideline 9.c, 52 FR 10019–20.

K. *Proposed Rule 4.8(h).* Proposed Rule 4.8(h) provides that the DEDPI or General Counsel may require advance payment of estimated fees that are likely to exceed $250. Advance payment may also be required when a requester has failed to pay a previous bill in a timely fashion. In appropriate circumstances, requesters may also be required to pay prior unpaid bills, including accrued interest, before a new request is processed. The proposed Rule is based on the amended FOIA, 5 U.S.C. 552(a)(4)(A)(v), and OMB Guideline 9.d, 52 FR 110020.

L. *Proposed Rule 4.8(i).* Proposed Rule 4.8(i) authorizes the use of credit cards, in addition to checks or money orders payable to the U.S. Treasury, as an alternative method of paying fees imposed by the Rule.

M. *Proposed Rule 4.8(j).* Consistent with OMB Guideline 9.a, 52 FR 10018, the proposed Rule provides that interest charges may be assessed starting on the 31st day after a bill is sent.

N. *Proposed Rule 4.8(k).* As provided by OMB Guideline 9.e, 52 FR 10029, Proposed Rule 4.8(k) authorizes use of the Debt Collection Act of 1982, Pub. L. 97–365, to collect unpaid fees.

O. *Proposed Rule 4.9.(a)(4).* Proposed Rule 4.9(a)(4), like Rule 4.8(b) of the current rules, 16 CFR 4.8(b), provides for copying of public records. The provision is moved to Rule 4.9, which now contains all provisions relating generally to public records. The provision makes explicit that costs will be imposed for all requests for public records to the same extent that they would be imposed for FOIA requests.

Subsection (ii) cross-references three provisions of Proposed Rule 4.8, to highlight to requesters the availability of fee waivers, the need to provide information to determine fees, and the need to agree to pay fees.

Subsection (iii) provides that records for sale at another government agency will not be provided to requesters under this section. This provision conforms the rules with section (a)(4)(A)(6) of the amended FOIA, 5 U.S.C. 552(a)(4)(A)(6). *See also* OMB Guideline 6.b., 7, 52 FR 10017–18.

P. *Proposed Rule 4.11(a)(1)(i).* Subsections (C), (D), and (E) of the rule are proposed to be amended.

Subsection (C) of the Proposed Rule contains cross-references to fee and fee waiver provisions that appear in Rule 4.11 of the current rule and that, in the proposed rule, are amended and transferred to Rule 4.8.

Subsection (D) provides that FOIA requests will not be deemed to be received until a requester agrees to pay fees, and that the request will be denied if the requester refuses to pay fees and is not granted a fee waiver. The provision delaying the date when a request will be deemed to be received is similar to provisions in subsections (D) and (E) of the current rule and is consistant with section (a)(3) of the FOIA, 5 U.S.C. 552(a)(3) (agency will provide records in response to a request that "is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed.") Since the provision requires an *agreement* to pay, and not actual payment, it is not inconsistent with section (a)(4)(A)(5) of the amended FOIA, 5 U.S.C. 552(a)(4)(A)(5), which limits the authority of agencies to demand advance payments.

Subsection (E), which parallels Rule 4.9(a)(4)(iii), provides that the Commission will not produce copies of documents under the FOIA if the documents are available for sale from another agency.

Q. *Proposed Rule 4.11(d).* Rule 4.11(d) governs requests from other government agencies seeking documents for

purposes other than law enforcement. The proposed amendment would apply the fee and fee waiver provisions of Proposed Rule 4.8 to such requests. The Commission proposed a similar change in 1986. 51 FR 32657.

These cost provisions would not apply to requests that are made for law enforcement purposes under Rule 4.11(c), 16 CFR 4.11(c). Also, as with other non-commercial requesters, government requesters under this provision will not be charged for two hours of search time and 100 pages of reproduction, nor will they be charged if their bill does not exceed $5.00. Furthermore, fee waivers will be available to government requesters in appropriate cases, even if they do not have a law enforcement purpose.

II. Nonpublic Records

The Reform Act amended the FOIA's exemption from disclosure for law enforcement records. 5 U.S.C. 552(b)(7) (Exemption 7). Proposed Rule 4.10(a)(5) amends the provision of the Commission's rules relating to Exemption 7.

Also, Proposed Rule 4.10(a)(11) incorporates the "exclusion" in section (c)(1) of the FOIA, 5 U.S.C. 552(c)(1), which provides that the statute's disclosure provisions are not applicable if (1) the records are law enforcement records, (2) the records relate to a pending investigation or proceeding that involves a possible violation of criminal law, (3) there is reason to believe that the subject is not aware of the pendency of the investigation or proceeding, and (4) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings. This provision would apply to records held by the Commission that contain information about potential criminal violations that may be referred to the Department of Justice for further prosecution. *Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act* (Dec. 1987), at 20 and n.37. In responding to an FOIA request, the agency can simply treat these records as if they do not exist, and advise the requester that there are no responsive documents. *Id.* at 27.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act.

In consideration of the foregoing, the Commission proposes to amend Title 16, Chapter I, Subchapter A of the Code of Federal Regulations, as follows:

PART 4—MISCELLANEOUS RULES

1. The authority for Part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.8(a) is redesignated as § 4.9(a)(3), and is amended by adding a heading before the first sentence:

§ 4.9 Public records.

(a) * * *

(3) *Location of Public Records.* * * *

* * * * *

3. Section 4.8 is revised to read as follows:

§ 4.8 Costs for obtaining Commission records.

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

(1) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(2) The term "duplication" refers to the process of making a copy of a document in order to respond to a request for Commission records.

(3) The term "review" refers to the examination of documents located in response to a request to determine whether any portion of such documents may be withheld, and the redaction or other processing of documents for disclosure. Review does not include time spent resolving general legal or policy issues regarding the release of the document.

(4) The term "direct costs" means expenditures that the Commission actually incurs in processing requests. Not included in direct costs are overhead expenses such as costs of document review facilities or the costs of heating or lighting such a facility or other facilities in which records are stored. The direct costs of specific services are set forth in § 4.8(b)(6).

(b) *Fees.* User fees pursuant to 31 U.S.C. 483(a) and 5 U.S.C. 552(a) will be charged according to this paragraph.

(1) *Commercial use requesters.* Commercial use requesters will be charged for the direct costs to search for, review, and duplicate documents. A commercial use requester is a requester who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(2) *Educational requesters, non-commercial scientific institution requesters, and representatives of the news media.* Requesters in these categories will be charged for the direct costs to duplicate documents, excluding charges for the first 100 pages. An "educational institution" is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. A "non-commercial scientific institution" is an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (b)(1) of this section, and that is operated solely to conduct scientific research the results of which are not intended to promote any particular product or industry. A "representative of the news media" is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. "News" means information that is about current events or that would be of current interest to the public.

(3) *Other requesters.* Other requesters will be charged for the direct costs to search for and duplicate documents, except that the first 100 pages of duplication and the first two hours of search time will be furnished without charge.

(4) *Waiver of small charges.* Charges will be waived if the total chargeable fees for a request do not exceed $5.00.

(5) *Materials available without charge.* These provisions do not apply to recent Commission decisions and other materials that may be made available to all requesters without charge while supplies last.

(6) *Schedule of direct costs.* The following uniform schedule of fees applies to records held by all constituent units of the Commission.

Duplication

Paper Copy (up to 8½" X 14")	
(Reproduced by Commission staff).	$0.14 per page.
(Reproduced by Requester).	$0.05 per page.
Computer Paper.....	$0.14 per page.

Microfilm Services

Film Copy—Paper to 16mm film.	$0.02 per frame.
Fiche Copy—Paper to 105mm fiche.	$0.02 per frame. +$0.23 per fiche.
Film Copy—Duplication of existing 100 ft. roll of 16mm film..	$3.35 per roll.

Fiche Copy—Duplication of existing 105mm fiche.	$0.04 per fiche.
Paper Copy—Converting existing 16mm film to paper	
(Conversion by Commission Staff).	$0.23 per page.
(Conversion by Requester).	$0.14 per page.
Paper Copy—Converting existing 105mm fiche to paper	
(Conversion by Commission Staff).	$0.23 per page.
(Conversion by Requester).	$0.14 per page.
Film Cassettes	$3.60 per cassette.

Other Charges

Computer Tape	$18.50 per tape.
Certification	$10.35 each.
Express Mail	$5.00 for the first pound and $.89 for each additional pound (per request).

Search and Review Fees

Agency staff is divded into three categories: clerical, attorney/economist, and other professional. Fees for search and review are assessed on a quarter-hourly basis, and are determined by identifying the category into which the staff member(s) conducting the search or review belong(s), determining the average quarter-hourly wages of all staff members within that category, and adding 16 percent to reflect the cost of additional benefits accorded to government employees. The exact fees are calculated and announced periodically and are available from the Public Reference Section, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580; (202) 326–2222.

(c) *Information to determine fees.* Each request for records shall set forth whether the request is made for other than commercial purposes and whether the requester is an educational institution, a noncommercial scientific institution, or a representative of the news media. The Deputy Executive Director initially, or the General Counsel or Commission on appeal, will use this information, any additional information provided by the requester, and any other relevant information to determine the appropriate fee category in which to place the requester.

(d) *Agreement to pay fees.* (1) Each request that does not contain an application for a fee waiver shall specifically indicate the requester's willingness either:

(i) To pay, in accordance with § 4.8(b) of these rules, whatever fees may be charged for processing the request; or

(ii) A willingness to pay such fees up to a specified amount.

(2) Each request that contains an application for a fee waiver must specifically indicate:

(i) The requester's willingness to pay, in accordance with § 4.8(c) of the rules, whatever fees may be charged for processing the request;

(ii) The requester's willingness to pay fees up to a specified amount; or

(iii) That the requester is not willing to pay fees if the waiver is not granted.

(3) If the agreement required by this section is absent, and if the estimated fees exceed $25.00, the requester will be advised of the estimated fees and the request will not be processed until the requester agrees to pay such fees.

(e) *Public interest fee waivers.*—(1) *Procedures.* A requester may apply for a waiver of fees. The requester shall explain why a waiver is appropriate under the standards set forth in this paragraph. The application shall also include a statement, as provided by paragraph (d) of this section, of whether the requester agrees to pay costs if the waiver is denied. The Deputy Executive Director initially, and the General Counsel or Commission on appeal, will rule on applications for fee waivers.

(2) *Standards.* (i) The first requirement for a fee waiver is that disclosure will likely contribute significantly to public understanding of the operations or activities of the government. This requirement shall be met if:

(A) The subject matter of the requested information concerns the operations or activities of the Federal government;

(B) The disclosure is likely to contribute to an understanding of these operations or activities;

(C) The understanding to which disclosure is likely to contribute is the understanding of the public at large, as opposed to the understanding of the individual requester or a narrow segment of interested persons; and

(D) The likely contribution to public understanding will be significant.

(ii) The second requirement for a fee waiver is that the request not be primarily in the commercial interest of the requester. Satisfaction of this requirement shall be determined by considering:

(A) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(B) If so, whether the public interest in disclosure is outweighed by the indentified commercial interest of the requester so as to render the disclosure primarily in the requester's commercial interest.

(f) *Unsuccessful searches.* Charges may be assessed for search time even if the agency fails to locate any responsive records or if it locates only records that are determined to be exempt from disclosure.

(g) *Aggregating requests.* If the Deputy Executive Director for Planning and Information initially, or the General Counsel or Commission on appeal, reasonably believes that a requester, or a group of requesters acting in concert, is attempting to evade an assessment of fees by dividing a single request into a series of smaller requests, the requests may be aggregated and fees charged accordingly.

(h) *Advance payment.* If the Deputy Executive Director for Planning and Information initially, or the General Counsel or Commission on appeal, estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, or if the requester has previously failed to pay a fee within 30 days of the date of billing, the requester may be required to pay some or all of the total estimated charge in advance. Further, the requester may be required to pay all unpaid bills, including accrued, interest, prior to processing the request.

(i) *Means of payment.* Payment shall be made by check or money order payable to the Treasury of the United States, or by credit card. Procedures for paying fees by credit card are available from the Public Reference Section, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Washington, DC 20580; (202) 326–2222.

(j) *Interest charges.* The Commission will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will accrue from the date of the billing, and will be calculated at the rate prescribed in 31 U.S.C. 3717.

(k) *Effect of the Debt Collection Act of 1982 (pub. L. 97–365).* The Commission may pursue repayment, where appropriate, by employing the provisions of the Debt Collection Act, (Pub. L. 97–365), including disclosure to consumer reporting agencies and use of collection agencies.

4. Section 4.9 is amended by adding paragraph (a)(4) as follows.

§ 4.9 **Public records.**

(a) * * *

(4) *Copying of public records—(i) Procedures.* Reasonable facilities for copying public records are provided at each office of the Commission. Subject to appropriate limitations and the availability of facilities, any person may copy public records available for inspection at each of those offices. Further, the agency will provide copies to any person upon request. Written requests for copies of public records should be addressed to the Deputy Executive Director for Planning and Information, and should specify as clearly and accurately as reasonably possible the records desired. For records that cannot be specified with complete clarity and particularity, requesters must provide descriptions sufficient to enable qualified Commission personnel to locate the records sought. In any instance, the Commission, the Deputy Executive Director for Planning and Information, or the official in charge of each office may prohibit the use of the Commission facilities to produce more than one copy of any public record, and may refuse to permit the use of such facilities for copying records that have been published or are publicly available at places other than the offices of the Commission.

(ii) *Costs; agreement to pay costs.* Requesters will be charged search and duplication costs prescribed by Rule 4.8 for requests under this section. All requests shall include a statement of the information needed to determine fees, as provided by § 4.8(c), and an agreement to pay fees (or a statement that the requester will not pay fees if a fee waiver is denied), as provided by § 4.8(d). Requests may also include an application for a fee waiver, as provieded § 4.8(e). Advance payment may be required, as provided by § 4.8(h).

(iii) *Records for sale at another government agency.* If requested materials are available for sale at another government agency, the requester will not be provided with copies of the materials but will be advised to obtain them from the selling agency.

* * * * *

5. Section 4.11(a)(1)(i)(C), (D), and (E) are revised to read as follows:

§ 4.11 **Request for disclosure of records.**

(a) * * *

(1) * * *

(i) * * *

(C) *Costs; agreement to pay costs.* Requesters will be charged search and duplication costs prescribed by Rule 4.8 for requests under this section. All requests shall include a statement of the information needed to determine fees, as provided by § 4.8(c), and an agreement to pay fees (or a statement that the requester will not pay fees if a fee waiver is denied), as provided by § 4.8(d). Requests may also include an application for a fee waiver, as provided by § 4.8(e). An advance payment may be required in appropriate cases as provided by § 4.8(h).

(D) *Failure to agree to pay fees.* If a request does not include an agreement to pay fees, and if the requester is notified of the estimated costs pursuant to Rule 4.8(d)(3), the request will be deemed not to have been received until the requester agrees to pay such fees. If a requester declines to pay fees and is not granted a fee waiver, the request will be denied.

(E) *Records for sale at another government agency.* If requested materials are available for sale at another government agency, the requester will not be provided with copies of the materials but will be advised to obtain them from the selling agency.

* * * *

6. Section 4.11(d) is amended by adding at the end of the existing text:

§ 4.11 **Request for disclosure of records.**

* * * * *

(d) * * * Requests under this section shall be subject to the fee and fee waiver provisions of § 4.8.

7. Section 4.10 is amended by revising paragraph (a) (5) to read as follows:

§ 4.10 **Nonpublic information.**

(a) * * *

(5) Records or information complied for law enforcement purposes, but only to the extent that production of such law enforcement records or information:

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

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

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

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

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

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

8. Section 4.10 is amended by adding paragraph (a)(11) to read as follows:

(a) * * *

(11) Records in an investigation or proceeding that involves a possible violation of criminal law, when there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the investigation could reasonably be expected to interfere with enforcement proceedings. When a request is made for records under § 4.11(a), the Commission may treat the records as not subject to the requirements of the Freedom of Information Act.

* * * * *

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 89-18620 Filed 8-8-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11-90-15]

Special Local Regulations; Navy Fleetweek Parade of Ships and Blue Angels Demonstration; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The U.S. Navy and the City of San Francisco coordinate an annual "Fleetweek" event on San Franscico Bay featuring a parade of ships sailing into the Bay and low level air shows performed by the Navy's Blue Angels along the San Francisco waterfront. This event takes place annually in early October. The Coast Guard is proposing to establish permanent special local regulations to ensure the safety of Navy Fleetweek participants an spectators. The special local regulations will restrict vessel traffic in regulated areas during the Fleetweek event. Annual notice of the specific dates and times of these regulations will be published in the Local Notice to Mariners and in the Federal Register.

DATES: Comments must be received on or before September 8, 1989. Because of the nature of these regulations and to ensure these regulations will be in effect for the upcoming October 1989 Fleetweek, while allowing sufficient opportunity for public comment, good cause exists to provide a 30-day comment period.

ADDRESSES: Comments should be mailed to Commander, Coast Guard Group San Francisco, Yerba Buena Island, San Francisco, CA 94130–9309. The comments and other materials referenced in this notice will be available for inspection and copying at Coast Guard Group San Francisco, Yerba Buena Island, San Francisco, California. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant G.E. Dunn, Coast Guard Group San Francisco, California. Telephone (415) 339–3445.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD11–89–15) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant G.E. Dunn, Project Officer, Coast Guard Group San Francisco, and Lieutenant Commander J.J. Jaskot, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

The U.S. Navy/City of San Francisco Fleetweek is held annually in early October. The week's activities are highlighted by the Navy Parade of Ships and the Navy Blue Angels Aerial Show. The ship parade and aerial show are held on the Saturday of Fleetweek. To respond to safety requirements for the transit of the large Navy vessels and the Blue Angels' flight operations, the Coast Guard Captain of the Port has annually issued regulations creating safety zones for this event. Since this event is conducted annually and includes virtually the same restricted areas each year, the Coast Guard proposes to establish permanent special local regulations which will provide for a regulated area during the event. Annual notice of the specific effective dates and times of these regulations will be published in the Local Notice to Mariners and in the **Federal Register**.

Regulated area "Alpha" will ensure unobstructed waters for safe navigation for the Parade of Navy Ships proceeding inbound via the Eastbound San Francisco Bay Traffic Lane. At approximately 10:30 a.m. local time (specific times will be annually announced in Local Notice to Mariners and the **Federal Register**), the naval vessels will sail in a column under the Golden Gate Bridge. The vessels will be spaced approximately 500 yards apart and will proceed at about 10 knots. The ship parade will sail along the San Francisco waterfront in the Eastbound San Francisco Bay Traffic Lane to a location near the San Francisco-Oakland Bay Bridge where the ships will disperse to their respective moorings. Except for persons or vessels authorized by the Coast Guard Patrol Commander, in regulated area "Alpha" no person or vessel may enter or remain within 500 yards ahead of the lead naval parade vessel, within 200 yards astern of the last parade vessel, and within 200 yards on either side of all parade vessels.

An aerial demonstration by the U.S. Navy Blue Angels will begin after the ship parade clears the San Francisco-Oakland Bay Bridge. In preparation for this demonstration, the Blue Angels will conduct a familiarization flight at approximately 12:00 Noon local time (with specific times to be annually announced) on the Thursday preceding the Saturday Parade of Ships, and a practice flight at approximately 12:00 Noon on the Friday preceding the Saturday Parade of Ships. On that Thursday, Friday, and Saturday, regulated area "Bravo" will cover the Blue Angels' flight line from Fort Point to Blossom Rock. Two Coast Guard vessels will be positioned within the regulated area to serve as reference points along the flight line for the aircraft pilots. The extremely low altitude passes require vessels to keep clear for the safety of the aircraft, vessels, and persons onboard. An aerial demonstration may be scheduled on Sunday if weather prevents the Saturday performance. The regulated area for the Blue Angels' demonstrations will restrict vessel access to some marinas and commercial docks. The short duration and minimal size of the regulated area will minimize any convenience.

Persons and vessels shall not enter or remain within the stated distances from the naval parade vessels in regulated area "Alpha", or enter or remain within regulated area "Bravo", unless authorized by the Coast Guard Patrol Commander. Fleetweek activities have traditionally attracted a sizable fleet of vessels, and large vessel operators needing to transit near Fleetweek activities are encouraged to make such transits well before or after the regulated areas are in effect.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The short length of time and minimal size of the regulated area will have minimal economic impact. Advance notice of the maritime event will also minimize the impact to maritime commerce. In prior years, Fleetweek activities have not created significant economic impact.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

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 rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 USC 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.1105 is added to read as follows:

§ 100.1105 San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels demonstration.

(a) *Effective Periods.* This section is effective during the U.S. Navy/City of San Francisco Fleetweek Parade of Navy Ships and Navy Blue Angels flight activities held annually in early October, from Thursday through Saturday (with a possible Sunday Blue Angels Flight Demonstration if weather prevents a Saturday performance). Annual notice of the special effective dates and times of these regulations will be published by the Coast Guard in the Local Notice to Mariners and in the **Federal Register.** To be placed on the Local Notice to Mariners mailing list contact: Commander (oan), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822–5399.

(b) *Regulated Areas:* The following areas are designated "regulated areas" during the Navy Parade of Ships and Blue Angels' Flight activities.

(1) *Regulated Area "Alpha" for Navy Parade of Ships.* The water of San Francisco Bay bounded by a line connecting the following points:

Latitude	*Longitude*
37°48'40" N	122°28'38" W
37°49'10" N	122°28'41" W
37°49'31" N	122°25'18" W
37°49'06" N	122°24'08" W
37°47'53" N	122°22'42" W
37°46'00" N	122°22'00" W
37°46'00" N	122°23'07" W

and thence along the shore to the point of beginning.

(2) *Regulated Area "Bravo" for U.S. Navy Blue Angels Activities.* The waters of San Francisco Bay bounded by a line connecting the following points:

Latitude	*Longitude*
37°48'53" N	122°24'08" W
37°49'32" N	122°24'16" W
37°48'56" N	122°27'58" W
37°48'21" N	122°27'44" W

and thence to the point of beginning.

Datum: NAD 83

(c) *Regulations:* All persons and/or vessels not authorized as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Group San Francisco to patrol the Fleetweek event.

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, in regulated area "Alpha" no preson or vessel may enter or remain within 500 yards ahead of the lead Navy parade vessel, within 200 yards astern of the last parade vessel, and within 200 yards on either side of all parade vessels. No person or vessel shall anchor, block, loiter in, or impede the through transit of ship parade participants or official patrol vessels in regulated area "Alpha."

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain within regulated area "Bravo."

(3) When hailed and/or signaled by an official patrol vessel, a person or vessel shall come to an immediate stop. Persons or vessels shall comply with all directions given.

(4) The Patrol Commander shall be designated by the Commander, Coast Guard Group San Francisco, California. The Coast Guard Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated areas.

Dated: August 3, 1989.

J.W. Kime,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 89–18606 Filed 8–8–89; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 162

[CGD2–89–04]

Ohio River at Louisville, KY; Restricted Area

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed rulemaking.

SUMMARY: The Coast Guard is proposing to restrict the launching and docking of recreational boats at the Louisville, Kentucky Wharf. The redevelopment of the wharf area no longer makes it possible to launch recreational boats from the wharf. In addition, routine docking space is no longer available as the wharf serves as the normal moorings for a number of commercial passenger vessels. Overlaying this area is an existing regulatory restriction previously enacted due to the narrow channel, numerous bridges, and a sharp bend in the river. Recreational boaters add to the congestion and increase the risk and likelihood of a marine casualty because they feel they can transit the canal area and turn around without violating the current regulation. The impact of the proposed action will be to further clarify the existing regulation allowing passage through the McAlpine Lock but precluding entrance of recreational boaters no intending to transit the lock. It will reduce congestion and the risk of a marine casualty in this constricted passageway.

DATES: Comments must be received on or before September 25, 1989.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard Marine Safety Office, Room 360, 600 Martin Luther King Jr. Place, Louisville, Kentucky 40202–2230. The Comments and other materials referenced in this notice will be available for inspection and copying at 600 Martin Luther King Jr. Place, Room 360, Louisville, Kentucky 40202–2230. Normal office hours are between 8 a.m. and 4 p.m., local time, Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Michael R. Stalker, Project Officer, Commercial (502) 582–5194, FTS 352–5194.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this Notice CGD2–89–04, and the specific section of the proposal to which their comments apply, and give specific reasons for each comment.

This proposal may be changed in light of the comments received. All comments received before the end of the comment period will be considered before final action is taken. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule making process.

Drafting Information: The drafters of this notice are LT Michael Stalker, Project Officer, and LT Michael A. Suire, Project Attorney, Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri, 63103–2398.

Discussion of Proposed Regulations: As a result of the redevelopment of the Louisville, Kentucky wharf it is no longer possible to launch recreational boats in the area. There is no longer sufficient space available for recreational boaters to dock at the wharf on a routine basis since this is the normal moorings for a number of commercial passenger vessels, including the "Zachary Taylor II", The "Belle of Louisville" support barge. This area is already a restricted area, 33 CFR 62.100, for approaching tows and large commercial vessels due to the narrow channel, numerous bridges, and a sharp bend in the river. Some recreational boater as are of the opinion that they can transit the canal and turn around therein. This adds to the congestion and

increases the likelihood of a marine casualty. The existing regulation states, in part, that it applies to "passage through the Louisville and Portland Canal." The intent was to allow passage through the McAlpine Lock, whereas interpretation of the current wording has added to the already serious congestion. This proposal will clarify the original intent of the existing regulation and it will remove the exception for launching and docking of pleasure of fishing craft within the restricted area or at the Louisville Kentucky wharf.

Economic Assessment and Certification: The proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The change will merely extend the restricted area to include recreational boaters since the operation of commercial vessels and large tows are already addressed within the existing regulations. By including recreational boaters in the regulation, congestion and the likelihood of marine casualty will be lessened, thus potentially saving lives and property, and allowing more vessels to transit the area efficiently and safely.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 162

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations: In consideration of the foregoing, the Coast Guard proposes to amend Part 162 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 162 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. Section 160.100 is revised to read as follows:

§ 162.100 Ohio River at Louisville, KY; Restricted Area

(a) *The area.* The portion of the Ohio River from the Clark Memorial (Highway) Bridge, Mile 603.5, Downstream to McAlpine Dam, Mile 604.4.

(b) *The regulations.* No pleasure of fishing craft shall be operated within the restricted area at any time without prior permission of the Captain of the Port, Louisville, Kentucky, except in case of emergency and except:

(1) For passage through McAlpine Lock, and

(2) During open river conditions.

Dated: July 28, 1989.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 89–18605 Filed 8–8–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–3625–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denial

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to deny a petition submitted by Lake City Army Ammunitions Plant (LCAAP), Independence, Missouri, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on the re-evaluation of waste-specific information provided by the petitioner. EPA previously proposed to grant this petition on March 6, 1986 (see 51 FR 7820).

The Agency is also proposing the use of an organic leachate model and a fate and transport model and their application in evaluating the waste-specific information provided by the petitioner. These models have been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned wastes, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the organic leachate model and fate and transport model used to evaluate the petition. Comments will be accepted until September 25, 1989. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the models used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by August 24, 1989. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–89–LCDP–FFFFF".

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS–340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, in room M2427, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Bob Kayser, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, (202) 382–2224.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published

in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3(c) and (d)(2). The substantive standard for "delisting" a treatment residue or aa mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use an organic leachate model and a fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of LCAAP's petitioned waste on human health and the environment. Specifically, the models will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because LCAAP is seeking a delisting for waste managed on site, ground-water monitoring data collected from the area where the petitioned waste is contained are necessary to determine whether hazardous constituents have migrated to the underlying ground water. Ground-water monitoring data collected from LCAAP's monitoring wells will help characterize the impact (if any) of the disposal of LCAAP's waste on ground-water quality.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

A. Lake City Army Ammunitions Plant, Independence, MO

1. Petition for Exclusion

The Lake City Army Ammunitions Plant (LCAAP) located in Independence, Missouri is involved in the manufacture of small arms ammunition and related items. LCAAP petitioned the Agency to exclude, on a one-time basis, its wastewater treatment sludge disposed of on-site in its south landfill cell (*i.e.*, Cell #2). Presently, EPA lists the treatment sludge as Hazardous Waste No. K046—"Wastewater treatment sludges from the manufacturing, formulation, and loading of lead-based

initiating compounds". The listed constituent for EPA Hazardous Waste No. K046 is lead.

LCAAP petitioned to exclude its waste because it does not believe that the waste meets the criteria of the listing. LCAAP believes that the wastewater treatment sludge contained in its south landfill cell is non-hazardous because the constituent of concern, although present in the waste, is in an essentially immobile form. LCAAP further asserts that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous) Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 USC 6921(f), and 40 CFR 260.22(d)(2)–(4).

As discussed in more detail below, the Agency previously proposed to exclude LCAAP's waste from hazardous waste regulation. However, as a result of public comments received on the proposed exclusion, the Agency reassessed its decision concerning the exclusion of LCAAP's waste. Today's proposal to deny this petition for delisting is the result of the Agency's re-evaluation of LCAAP's petition.

2. Background

On May 18, 1982, LCAAP petitioned the Agency to exclude its K046 wastewater treatment sludge that, in the past, was collected in two on-site lagoon trains (also referred to as the east and west lagoon trains) and then periodically transferred from the lagoon trains to the south landfill cell for disposal. On March 6, 1986, the Agency proposed to exclude LCAAP's waste from hazardous regulation (see 51 FR 7820). On April 22, 1986, the Agency received one public comment pertaining to the proposed exclusion of LCAAP's petition. The commenter primarily questioned the Agency's use of a statistical mean rather than the maximum EP leachate value in the vertical and horizontal spread (VHS) model. Furthermore, the commenter pointed out that EPA should have considered existing ground-water monitoring data for the landfill during the evaluation of the petition, including evidence of pre-existing contamination from the landfill and other units at the site. As a result of this comment, EPA recognized that available ground-water monitoring data were important in the evaluation of the petition and requested that LCAAP provide further sampling and analysis of the south landfill waste, as well as ground-water monitoring data.

On May 30, 1986, upon request of the EPA, LCAAP also submitted a petition addressing only the waste residing in the two on-site lagoon trains. (The lagoon trains are each composed of three lagoons in series.) EPA requested this separate delisting demonstration to ensure that these lagoon trains had not adversely affected the environment. As a consequence of this separate demonstration, the original petition (*i.e.*, the subject of this notice) became a petition solely for the waste contained in the south landfill cell. (LCAAP subsequently withdrew its petition for the lagoon trains on August 31, 1988.)

On July 14, 1986, the Agency announced the availability of ground-water monitoring data that was submitted in support of LCAAP's petition and provided an opportunity for public comment on these data (see 51 FR 25372). The same commenter mentioned previously in today's notice reiterated its concerns regarding the Agency's evaluation of LCAAP's ground-water monitoring data.

The Agency's re-evaluation of the petition, including the additional information requested as a result of comments received on the March 6, 1986 proposed exclusion, indicates that the petitioned south landfill cell waste is hazardous and has the potential to harm human health and the environment. EPA recognized, during its re-evaluation of the petition, that it was probably more appropriate to determine average leachable lead levels on a waste- and sampling event-specific basis than to estimate a single average leachable lead level for all wastes, or an average for all lagoon wastes and an average for all landfill wastes. Although the commenter on the previous notices suggested that the Agency, at a minimum, undertake a standard statistical analysis of the leachable lead data. EPA did not believe it necessary to perform such an analysis for the following reasons: (1) the calculated mean values for the east and west lagoon data indicated significant levels of leachable lead (*i.e.*, greater than the delisting health-based level for lead) at the compliance point; (2) the calculated mean values for the south landfill cell waste equal the delisting health-based level for lead; and (3) the maximum reported leachable lead levels for the lagoon and south landfill data for all sampling events conducted between August 1980 and September 1985 indicate significant levels of leachable lead at the compliance point. (The Agency's evaluation of leachable lead concentrations in LCAAP's wastes is discussed in more detail in a later section of today's notice.)

The Agency's re-evaluation of the ground-water monitoring wells in the vicinity of the south landfill cell, including the additional information obtained subsequent to the March 6, 1986 proposal, indicates that the existing ground-water monitoring system is inadequate for determining the full impact of the petitioned waste on ground water. In addition, ground-water monitoring data show detected levels of lead and antimony in ground water which exceed the delisting health-based levels for these constituents. (The Agency's evalution of LCAAP's ground-water monitoring system and data is discussed in more detail in a later section of today's notice.) Because the Agency already has sufficient bases to propose denial of LCAAP's petition, EPA chose not to assess whether evidence of pre-existing ground-water contamination (*i.e.*, the additive effects of potential contamination from other sources) should also be included as part of the rationale for denying the petition.

The Agency's re-evaluation of the petitioned south landfill cell waste also indicates that the petition is incomplete and that this information should have been submitted for the south landfill waste. Specifically, LCAAP did not quantify total or leachable concentrations of the EP toxic metals (except for lead), nickel, cyanide, and antimony for the waste in the south landfill. Although the Agency considers the petition incomplete, the Agency believes that there is sufficient data to propose to deny the petition without further information. Furthermore, the Agency believes that the wastes collected in the lagoon trains, to some extent, characterize the waste contained in the south landfill cell because the wastes, once removed from the lagoon trains, are transferred to LCAAP's landfill. EPA believes that the metal species in the lagoon train wastes may be less concentrated than in the south landfill cell waste because the lagoon train wastes contain a higher percentage of liquid. Therefore, the Agency used characterization data of the east and west lagoon train waste to supplement available data for the south landfill cell in its re-evaluation of the petitioned south landfill cell waste.

In support of its petition, LCAAP submitted (1) detailed descriptions of its manufacturing and waste treatment processes, including schematic diagrams; (2) a listing of raw materials used in the manufacturing and treatment processes; (3) results of total constituent and EP leachate analyses of various

waste samples for the EP toxic metals, nickel, cyanide, and antimony; (4) results of total constituent analyses of representative samples of the waste for methylene chloride, resorcinol, toluene, and 1,1,1-trichloroethane; (5) total oil and grease analyses data on representative waste samples; (6) results from characteristics testing for ignitability, corrosivity, and reactivity tests; and (7) ground-water monitoring data for the unit in which the petitioned waste is managed.

In its manufacture of small arms ammunition and related items, LCAAP fabricates metal primer cups containing a blend of lead styphnate and barium nitrate and other compounds such as antimony sulfide. These primer cups are ultimately inserted, or charged, into ammunition cartridges. Production of the metal primer cups begins with the formulation of the lead styphnate blend. The preparation of this blend occurs through four steps. The first step involves nitrating resorcinol in sulfuric acid to produce trinitroresorcinol (TNR). The TNR is then reacted with magnesium oxide to produce magnesium styphnnate. In turn, the magnesium styphnate is reacted with lead nitrate to form lead styphnate. The final step involves blending lead styphnate and barium nitrate with other compounds (*i.e.*, antimony sulfide, tetracene, pentaerythritol tetranitrate, calcium silicide, aluminum powder, or acetylene black) to produce various priming mixes. As stated previously, primer cups of various blends are then charged into ammunition cartridges.

LCAAP's petitioned K046 waste results from the treatment of clean-up water used in the blending and primer charging processes. Initially, LCAAP treats the clean-up water with aluminum, caustic (*i.e.*, sodium hydroxide), and heat to destroy the reactivity of residual explosive materials. The neutralized clean-up water is then combined (at the entrance to LCAAP's waste treatment facility) with non-hazardous wastestreams discharged primarily from metal forming operations and, to a lesser extent, from wastestreams discharged from other facility operations, including water treatment, incendiary handling, and miscellaneous ballistics-testing operations. In general, these wastestreams are composed of alkaline cleaners, acid pickling solutions, soaps, emulsion lubricants, and rinsewaters.

At the waste treatment facility, a pH controlled flotation unit removes waste oils and grease from the combined wastewater streams. The removed waste oils and grease are disposed of in a separate on-site sanitary landfill. Lime is then added to the wastewater stream to raise the pH, thereby precipitating heavy metal hydroxides. The precipitated metal hydroxides are flocculated with alum and are subsequently discharged to the lagoon trains to partially dry for several weeks before disposal in LCAAP's landfill. The effluent from LCAAP's waste treatment facility is discharged under a National Pollutant Discharge Elimination System (NPDES) permit. The wastewater treatment sludge contained in the south landfill cell is the subject of today's notice.

To collect representative samples from lagoons and landfills the size of LCAAP's, petitioners are normally requested to divide the unit into 10,000 square foot sections and randomly collect five full-depth core samples from each section. The five full-depth core samples are then composited (mixed) by section. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846, (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

As stated previously, the Agency also used characterization data of the waste in the east and west lagoon trains in its re-evaluation of LCAAP's petition because the chemical composition of the lagoon waste is considered by LCAAP and EPA to be very similar to the landfill waste. The landfill contains wastes that had originally been collected in the lagoons. In its delisting demonstration, LCAAP provided analytical results for numerous sampling events. Each of these sampling events is discussed in the following paragraphs in chronological order. A summary of the analytical information submitted in support of LCAAP's petition is also presented in Table 1, which follows the description of all sampling events.

LCAAP's original delisting petition contained analyses of waste collected from the east and west lagoon trains. During the period from August 1980 to February 1982, LCAAP collected five random samples of the waste in the lagoon trains. A detailed description of procedures used to collect these grab samples was not provided. LCAAP indicated, however, that these samples were collected at the "top of the sludge bed at the edges of the lagoon". Four of these five samples were analyzed for the extraction procedure (EP) leachate concentration (*i.e.*, mass of a particular constituent per unit volume of extract) of the EP toxic metals. One of these four samples was analyzed for leachable concentrations of endrin, lindane, methoxychlor, toxaphene, 2,4-D, and 2,4,6-TP (Silvex). The fifth sample was analyzed for only leachable concentrations of barium and lead.

In June 1982, LCAAP collected eight waste samples, four each from the first lagoons in the east and west lagoon trains. The first lagoons were divided into four 10,000 square foot sections, from which five full-depth core samples were collected. The five core samples were then composited by section, producing a total of four composite samples, one from each section, for each lagoon train. Excess liquid was removed, using a 0.45 micron filter, from these samples prior to analysis. These samples were analyzed only for leachable concentrations of lead.

In February 1984, LCAAP collected four composite samples from the east lagoon train according to the sampling procedures utilized in the June 1982 sampling. The February 1984 samples were analyzed for the total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) of methylene chloride, toluene, and 1,1,1-trichloroethane, and total oil and grease content.

LCAAP also sampled the south landfill cell in February 1984. The south landfill cell was divided into four quadrants, from which five full-depth core samples were collected. The samples were composited by quadrant, producing a total of four samples, one from each quadrant. Because the south landfill cell is 2.5 acres, LCAAP should have divided the landfill cell into at least ten sections and collected at least ten composite samples of the south landfill cell waste. Although the four south landfill cell samples collected may not be completely representative of all of the waste contained in the landfill cell, the Agency considers these samples to be representative of at least a portion of the petitioned waste and, therefore, considered these samples in the evaluation of LCAAP's petition. The February 1984 samples were analyzed for the total constituent concentrations of methylene chloride, toluene, and 1,1,1-trichloroethane, and total oil and grease content.

LCAAP also provided leachable lead levels for eight samples collected from the east lagoon train during August 1984 and characterized the data as being for the south landfill cell. A detailed description of procedures used to collect these samples was not provided.

In September 1984, LCAAP again collected four composite samples from both the east lagoon train and the south landfill cell according to procedures previously utilized in the June 1982 sampling. These eight samples were analyzed for total constituent concentrations of resorcinol.

During three sampling events conducted in September and October 1985, LCAAP collected 12 additional composite samples from the east lagoon train. A detailed description of procedures used to collect these samples was not provided. Four composite samples were analyzed for only leachable concentrations of lead. The other eight composite samples were analyzed for total constituent and leachable concentrations of the EP toxic metals, nickel, cyanide, and antimony, and total sulfide levels.

As requested by EPA, LCAAP collected four composite samples from the west lagoon train on March 31, 1986. The sampling procedure used was consistent with the procedure utilized in the June 1982 sampling. LCAAP analyzed these four composite samples for total constituent and EP leachate concentrations of the EP toxic metals, nickel, and cyanide. These samples also were analyzed for total constituent concentrations of antimony, methylene chloride, resorcinol, toluene, and 1,1,1-trichloroethane and total oil and grease content.

Comments received on the proposed exclusion of LCAAP's petition suggested that the petitioned waste was not well mixed and showed wide variability in composition. In response, the Agency requested that LCAAP sample the south landfill cell to further characterize the petitioned waste. In February 1987, the south landfill cell was divided into four sections. Twelve random full-depth core samples were collected from one section and eleven random full-depth core samples were collected from each of the other three sections for a total of 45 core samples. These 45 core samples were analyzed for leachable concentrations of lead. Eight of these core samples, two from each section, were analyzed for total constituent concentrations of lead; LCAAP did not indicate how these eight samples were selected for analysis.

Table 1 summarizes the sampling events for the lagoon trains and the south landfill cell and provides information regarding the number, sample location, and the analyses performed on the waste samples. As demonstrated in Table 1, LCAAP characterized the waste with respect to specific constituents. In addition, LCAAP claims that additional hazardous constituents (as listed in 40 CFR 261, Appendix VIII) are not present in the waste. Thus, only the constituents listed in Table 1 were target analytes of LCAAP's analyses.

TABLE 1.—SUMMARY OF ANALYSIS INFORMATION SUBMITTED, WASTEWATER TREATMENT SLUDGES

Sampling date(s)	No. of samples	Sampling location	Analyte(s)
8/80–2/82	5	East, West Lagoon	—leachable EP toxic metals —leachable endrin, lindane, methoxychlor, toxaphene, 2,4-D, and 2,4,6-TP (Silvex)
6/82	4	East Lagoon	—leachable lead
	4	West Lagoon	
2/84	4	East Lagoon	—methylene chloride, 1,1,1-trichloroethane, toluene
	4	South Landfill	—oil & grease
8/84	8	East Lagoon	—leachable lead
9/84	4	East Lagoon	—resorcinol
	4	South Landfill	
9/85–10/85	8	East Lagoon	—total and leachable EP toxic metals, nickel, cyanide, and antimony —total sulfide
9/85	4	East Lagoon	—leachable lead
3/86	4	West Lagoon	—total and leachable EP toxic metals, nickel, and cyanide —total antimony —methylene chloride, resorcinol, toluene, 1,1,1-trichloroethane —oil & grease
2/87	45	South Landfill	—leachable lead —total lead (8 samples)

Based on comments received on the proposed exclusion regarding the evaluation of ground-water monitoring data, the Agency requested and LCAAP subsequently submitted additional ground-water monitoring information collected from wells monitoring the Solid Waste Landfill to demonstrate that waste contained in the south landfill cell was not adversely impacting ground-water quality. The ground-water monitoring information submitted by LCAAP and received from EPA Regional authorities included: (1) Well location information; (2) boring logs and well construction details for each well; (3) water levels; and (4) results of the analysis of ground-water samples.

3. Agency Analysis

LCAAP did not specify analytical methods used to quantify the total constituent concentrations of the EP toxic metals, nickel, cyanide, and antimony in the waste samples. LCAAP used the EP Toxicity Test procedure, as described in 45 FR 33119 (May 19, 1980), to quantify the leachable concentrations of the EP toxic metals, nickel, cyanide, and antimony in the lagoon samples and leachable concentrations of lead in the south landfill cell samples. Table 2 presents the maximum total constituent and EP leachate concentrations of the EP toxic metals (excluding leachable lead), nickel, cyanide, and antimony. Table 2 also presents total sulfide levels in the lagoon waste. (Analysis for EP leachable concentrations of sulfide (or reactive sulfide) is not necessary because the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide.)

LCAAP did not submit total constituent analysis data for the EP toxic metals (except for lead) for samples collected from the south landfill cell. The Agency, however, believes that the east and west lagoon train data, to some extent, characterize the waste contained in the south landfill cell because the waste, once removed from the lagoon trains, was disposed of in LCAAP's landfill. The Agency did not require LCAAP to re-analyze its south landfill cell waste for total constituent

or leachable levels of the EP toxic metals, nickel, cyanide, or antimony because there was sufficient basis to propose to deny the petition without this information.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND EP LEACHATE CONCENTRATIONS (PPM) WASTEWATER TREATMENT SLUDGES

Constituents	Total constituent concentrations	EP leachate concentrations
East Lagoon		
Antimony	244	<1.0
Arsenic	<1.0	<0.25
Barium	56	<5.0
Cadmium	<1.0	<0.05
Chromium	48	<0.25
Lead	1,470	*
Mercury	0.844	<0.01
Nickel	22	<0.25
Selenium	<1.0	<0.05
Silver	<1.0	<0.25
Cyanide	0.062	<0.001
Sulfide	6.1	—
West Lagoon		
Antimony	137	1.07
Arsenic	0.69	<0.25
Barium	1,081	<5.0
Cadmium	6.4	<0.05
Chromium	42	<0.10
Lead	1,200	*
Mercury	0.1	<0.01
Nickel	25.6	<0.25
Selenium	0.64	<0.05
Silver	7.9	<0.25
Cyanide	<0.01	<0.001
Sulfide	<4	—
South Landfill		
Lead	1,044	*

<: Denotes that the constituent was not detected at the detection limit specified in the table.
* Leachable lead data are presented in Table 3 of today's notice.

The Agency recognized that detection limits in Table 2 (and Tables 3, 4 that follow) may not represent the lowest concentrations quantifiable by LCAAP, when using the appropriate analytical methods to analyze its waste. However, the Agency did not require LCAAP to re-analyze its waste using lower detection limits because these detection levels were sufficient to evaluate the petition. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits).

Table 3 that follows presents the collective EP leahchate analyses results for lead in LCAAP's wastewater treatment sludges. For each sampling event, the sampling location and the maximum and mean lead concentrations are presented.

TABLE 3.—SUMMARY OF EP LEACHABLE LEAD DATA (PPM) WASTEWATER TREATMENT SLUDGES

Sampling date(s)	Sampling location	Maximum lead concentrations	Mean lead concentrations
8/80-2/82	East and West Lagoons	0.34	0.19
6/82	East Lagoon	1.7	1.3
8/84		0.57	0.41
9/85		1.53	0.3
10/85		0.07	0.055
6/82	West Lagoon	1.1	0.79
3/86		<0.05	<0.05
8/84	South Landfill	0.43	0.34
2/87		0.143	0.053

<: Denotes that the constituent was not detected at the detection limit specified in the table.

Using "Methods for Chemical Analysis of Water and Wastes," U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio (EPA–600/4–79–020) Method 413.1, LCAAP determined that its south landfill cell, east lagoon train, and west lagoon train wastes had maximum oil and grease contents of 0.69, 0.66, 0.28 percent, respectively; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of the constituents of concern in the oil phase, which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample). See SW–846 Method 1330.

Based on analytical results provided by the petitioner, pursuant to 40 CFR 260.22, the south landfill cell waste was determined not to be ignitable, corrosive, or reactive. See 40 CFR 261.21, 261.22, and 261.23.

LCAAP used SW–846 Method 8040 to analyze its lagoon train and south landfill cell wastes for resorcinol. LCAAP did not specify the analytical methods used to quantify toluene, 1,1,1trichloro-ethane, and methylene chloride levels in the wastes. Table 4 presents the maximum total concentrations of methylene chloride, resorcinol, toluene, and 1,1,1-trichloroethane reported in LCAAP's petition.

TABLE 4.—TOTAL CONSTITUENT CONCENTRATIONS (PPM) WASTEWATER TREATMENT SLUDGES

Constituents	East Lagoon	West Lagoon	South Landfill
Methylene chloride	0.06	<1	<0.01
Resorcinol	<0.15	<1	<0.15
Toluene	<0.01	<1	<0.01
1,1,1-Trichloroethane	<0.01	<1	<0.01

<: Denotes that the constituent was not detected at the detection limit specified in the table.

LCAAP submitted a signed certification stating that approximately 3,000 cubic yards of wastewater treatment sludge had been discarded annually in the south landfill cell for at lest five years. LCAAP estimates that

the 2.5 acre south landfill cell contains about 15,000 cubic yards of waste. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts LCAAP's certified estimate of 15,000 cubic yards.

The Agency conducts a spot-check sampling and analysis program to verify the representative nature of the date for some percentage of delisting petitions. As part of this program, the Agency conducted a spot-check sampling visit to LCAAP. The results of this visit are discussed later in this notice.

4. Agency Evaluation

Because LCAAP's petition is for waste contained in an on-site landfill, the Agency chose to evaluate the petition using a landfill scenario. The Agency believes that this scenario is appropriate and a reasonable worst-case management scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the dilution of a toxicant within the aquifer for a specific volume of waste). In addition, the Agency used its Organic Leachate Model (OM) to estimate the leachable portion of the organic constituents in the petitioned waste. See 50 FR 48953 (November 27, 1985), 51 FR 41084 (November 13, 1986), and the RCRA public docket for these notices for a detailed description of the OLM and its parameters. The results of the OLM analysis were used in conjunction with the VHS model to estimate the potential impact of the organic constituents on the underlying aquifer. The Agency requests comments on the use of the OLM and VHS model as applied to the evaluation of LCAAP's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of the hazardous inorganic constituents detected in the EP extract of LCAAP's wastewater treatment sludge. This evaluation used available EP leachate data submitted by LCAAP for its south landfill cell and lagoon train wastes. As stated previously, the Agency believes that LCAAP should have evaluated the south landfill cell samples for the EP toxic metals as opposed to just lead, but did not request additional analyses because there was sufficient basis to propose denial of the petition. The Agency also believes that the lagoon train EP leachate data, to some extent, characterize the south landfill cell waste.

The Agency's evaluation of antimony levels, using LCAAP's estimate of 15,000 cubic yards of south landfill cell waste and the maximum reported EP leachate concentrations for the lagoon train samples, generated a compliance-point concentration of 0.17 ppm, which is above the 0.01 ppm health-based level for antimony used in delisting decision-making.[1] The Agency's evaluation of lead levels (maximum and mean EP leachate concentrations of landfill cell and lagoon train samples), using LCAAP's estimate of 15,000 cubic yards, generated the compliance-point concentrations shown in Table 5. Six of the eight maximum compliance-point concentrations and three of eight mean compliance-point concentrations exceed the 0.05 ppm health-based level for lead used in delisting decision-making.

TABLE 5.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS FOR LEAD (PPM) WASTEWATER TREATMENT SLUDGES

Sampling date(s)	Sampling location	Compliance-point concentrations[1]	
		Maximum	Mean
8/80–2/82	East and West Lagoons	[2] 0.054	0.03
6/82	East Lagoon	[2] 0.27	[2] 0.21
8/84		[2] 0.09	[2] 0.065
9/85		[2] 0.24	0.047
10/85		0.01	0.01
6/82	West Lagoon	[2] 0.17	[2] 0.12
8/84	South Landfill	[2] 0.068	0.05
2/87		0.023	0.008

[1] Represents compliance-point concentrations calculated using maximum or mean lead leachate data (see Table 3).
[2] Compliaance-point concentration exceeds the health-based level for lead of 0.05 ppm. See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1989, located in the RCRA public docket.

The Agency typically does not present its evaluation of the mobility of non-detectable levels of hazardous constituents from a petitioner's waste when appropriate analytical test methods are used. However, as stated previously, the Agency recognizes that detection limits in Table 2 may not represent the lowest concentrations quantifiable by LCAAP, when using appropriate analytical methods. Therefore, the Agency wishes to note that its evaluation of the remaining inorganic constituents (*i.e.*, arsenic, barium, cadmium, chromium, mercury, selenium, silver, nickel, and cyanide) from LCAAP's lagoon train waste, using the VHS model and the detection limits in Table 2, generated compliance-point concentrations below the delisting health-based levels for these constituents. (See the RCRA public docket for today's notice for more detail.)

The lagoon train waste exhibited antimony levels at the compliance point that exceed the health-based level for antimony used in delisting decision-making. Leachable antimony levels in all four of the west lagoon train samples failed the VHS model evaluation. Although EP leachate data were not provided for the south landfill cell samples, the Agency believes that it is likely that antimony levels in the south landfill cell would also be of concern. As stated previously, EPA believes that the metal species in the south landfill cell waste may be more concentrated

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket."

than in the lagoon train waste because the south landfill waste contains a lower percentage of liquid. The Agency believes that leachable antimony concentrations in the south landfill cell samples should either approximate or exceed leachable antimony concentrations in the lagoon train samples.

As seen in Table 5, LCAAP's lagoon train and south landfill cell wastes exhaibit levels at the compliance point that exceed or equal the delisting health-based level for lead regardless of whether the maximum leachate values or calculated mean values are used in the evaluation. This evaluation clearly shows that the wastewater treatment sludge contains significant levels of leachable lead.

The maximum reported concentration of total cyanide in the lagoon train waste is 0.062 ppm, from which the Agency concludes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Lastly, because the total constituent concentration of sulfide in the lagoon train waste in less than 6.1 ppm, the Agency believes that the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Due to the lack of data for cyanide and sulfide in the south landfill waste, the Agency is unable to conclude whether reactive cyanide or sulfide levels in the south landfill cell waste will also be below the respective interim standards for cyanide and sulfide.

The Agency also used the VHS model to evaluate the mobility of methylene chloride that is potentially present in the petitioned waste. The Agency used the OLM to predict the leachable concentration of methylene chloride, based on a detected level of 0.06 ppm in the lagoon train waste. The resulting leachable concentration and LCAAP's estimate of 15,000 cubic yards of south landfill cell waste were used as inputs in the VHS model in order to assess the potential impacts of this constituent upon the ground water. The compliance-point concentration for methylene chloride was calculated to be 0.002 ppm, which is below the 0.005 ppm health-based level for methylene chloride used in delisting decision-making.[2]

[2] See footnote 1.

As stated previously, LCAAP did not specify the analytical methods used to quantify toluene and 1,1,1-trichloroethane concentrations in the waste. Thus, the Agency recognizes that detection limits in Table 4 may not represent the lowest concentrations quantifiable by LCAAP, when using appropriate analytical methods. Therefore, the Agency wishes to note that its evaluation of toluene and 1,1,1-trichloroethane levels, using the OLM/VHS model and the detection limits in Table 4, generated compliance-point concentrations below the delisting health-based levels for these constituents. (See the RCRA public docket for today's notice for more detail.)

The Agency did not evaluate the mobility of resorcinol from LCAAP's lagoon train waste because it was not detected using the appropriate analytical test method (see Table 4). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

The Agency reviewed LCAAP's argument concerning the presence of hazardous constituents (*e.g.*, those constituents listed in 40 CFR 261, Appendix VIII), other than those tested for, in the south landfill cell waste. LCAAP claims that the additional hazardous constituents are not expected to be present in the petitioned waste given the nature of the facility's manufacturing and treatment operations and raw materials used in these operations. The Agency believes that LCAAP's analyses and presentation may be insufficient to demonstrate that the south landfill cell waste contains no other hazardous constituents. Specifically, the Agency is uncertain whether LCAAP has fully described the solid wastes that have been disposed of in the south landfill cell. Because all solid wastes disposed of in the south landfill cell are also considered hazardous in accordance with 40 CFR 261.3(a)(2)(iv) (*i.e.*, the mixture rule), LCAAP should have also demonstrated that these wastes did not contain additional hazardous constituents. The Agency typically requires petitioners to submit analytical results or mass balance calculations for constituents expected to be present in petitioned wastes. The Agency, however, did not request LCAAP to provide further information about additional hazardous constituents in the south landfill cell because sufficient data existed to support a proposed denial of the petition.

On August 14, 1986, staff under contract to the Agency conducted a site visit to LCAAP as part of the Agency's spot-check sampling and analysis program. Eight composite samples (each composed of two full-depth core samples) were collected from the landfill cell and eight full-depth core samples were collected from the west lagoon train. The samples were analyzed according to EPA test methods by a laboratory under contract to EPA. Analytical difficulties were encountered during analyses of the spot-check samples. These data, therefore, were not considered in the Agency's review of LCAAP's petition. (See the RCRA public docket for today's notice for more detail.)

In response to public comments of the proposed exclusion of the waste contained in LCAAP's south landfill cell, the Agency requested that LCAAP submit additional ground-water monitoring data for the wells which monitor the Solid Waste Landfill (of which the south landfill cell is a part). (A notice of availability of the ground-water monitoring data was published on July 14, 1986 (see 51 FR 25372).) The Agency reviewed the ground-water monitoring information available for the south landfill cell, including information provided by staff in EPA Region VII. The Agency was determined that the monitoring system for the Solid Waste Landfill is inadequate for meeting the requirements of 40 CFR Part 265, Subpart F. (See the RCRA public docket for today's notice for more detail.) Nevertheless, the Agency believes that the ground-water monitoring data are sufficient to support a proposed denial of LCAAP's petition.

Although the ground-water monitoring system for the south landfill cell is inadequate for determining the full impact of the petitioned waste on ground water, the Agency believes that the data from wells #2 and #5, located adjacent to the south landfill cell, are sufficient evidence to indicate that the petitioned waste may have the potential to contaminate ground water at levels that exceed delisting health-based levels. Specifically, lead and antimony were detected at concentrations exceeding the delisting health-based levels in ground-water samples collected from wells #2 and #5. Lead and antimony concentrations reported in samples collected from #2 and #5 are presented in Table 6.

TABLE 6—SUMMARY OF SELECTED GROUND-WATER MONITORING DATA (PPM) SOLID WASTE LANDFILL

Constituents and sampling dates	Levels of regulatory concern [1]	Well #2	Well #5
Lead	0.05		
5-24-85 [2]		0.074	0.087
8-14-85		0.027	0.035
8-16-85		0.019	0.042
10-23-85		0.029	0.035
1-30-86		<0.01	0.022
4-9-86		<0.01	<0.01
7-23-86		<0.010	<0.010
9-29-87 [3]		<0.010/0.015	0.017/0/019
Antimony	0.01		
9-29-87		0.011	0.013

<: Denotes that the constituent was not detected at the detection limit specified in the table.

[1] See "Docket Report on Health-based Regulatory Leels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

[2] LCAAP believes that the results of the 5-24-85 sampling event "were in error due to a laboratory abnormality" (correspondence dated September 6, 1985 to David Topping, EPA Headquartes, from R.D. Langevin, LCAAP). The Agency does not believe that LCAAP's resampling results (8-14-85 and 8-16-85) constitute adequate evidence to support such a conclusion. Not only did LCAAP's resampling events occur almost three months after the original sampling efforts (a period of time equivalent to a "quarter"), but the data provided do not demonstrate that any analytical error occurred in the 5-24-85 sampling event.

[3] Values represent the results of replicate analyses.

Ground-water monitoring information indicates that from the initiation of LCAAP's ground-water monitoring program until at least October 6, 1986, LCAAP filtered their ground-water samples prior to analysis for metals. For the purposes of delisting, filtering ground-water samples is not considered an acceptable technique. As a result, the concentration of total lead in ground-water in the wells near the south landfill cell may be greater than the lead concentrations reported by LCAAP, at least prior to October 6, 1986.

In addition to ground-water monitoring, LCAAP has performed unsaturated zone monitoring at the south landfill cell. Two lysimeters were installed under the south landfill cell at depths of 4 feet below the bottom of the cell. LCAAP reported lead concentrations of 0.172 and 0.05 ppm for lysimeter samples collected on May 24 and August 14, 1985, respectively. LCAAP believes that the results of the May 24, 1985 sampling event "were in error due to a laboratory abnormality" (correspondence dated September 6, 1985 to David Topping, EPA Headquarters, from R.D. Langevin, LCAAP). The Agency does not believe that LCAAP's resampling results (August 14, 1985) constitute adequate evidence to support such a conclusion. Not only did LCAAP's resampling occur almost three months after the original sampling effort (a period of time equivalent to a "quarter"), but the results obtained do not demonstrate that any error occurred in the analysis of the May 24, 1985 sample. The Agency believes the results of unsaturated zone monitoring support a conclusion that the waste contained in the south landfill cell has adversely affected the environment, and has the potential for causing ground-water contamination.

In summary, the Agency believes that the ground-water monitoring data from the existing monitoring system are not adequate to eliminate the south landfill cell as a source of ground-water contamination, and to the contrary, provide a reasonable basis for concluding that the south landfill cell waste may have adversely affected ground-water quality.

5. Conclusion

The Agency believes that LCAAP has not demonstrated that the petitioned waste is not hazardous. Specifically, the EP leachate data provided by LCAAP indicate that the south landfill cell waste may leach significant concentrations of lead. This conclusion is supported by EP leachate data for antimony and lead from the lagoon train wastes and ground-water monitoring data for the south landfill cell, and further indicated by lysimeter data for the south landfill cell. The Agency believes that the lagoon train samples were non-biased and demonstrate, to some extent, the potential variation of constituent concentrations that may occur in these wastes. The Agency also notes that, due to the very limited analysis provided for samples from the south landfill cell (only lead was determined), LCAAP has not adequately demonstrated that other constituents are not present at hazardous levels. In the absense of this south landfill cell waste data, EPA considered the data from the lagoon trains for evidence of the concentrations of other constituents in the south landfill cell waste. This consideration does not imply that the lagoon train data are an acceptable substitute for south landfill cell data. LCAAP should have provided these data, but were not requested to because there was already sufficient technical basis to propose denial of the petition. The lagoon train data provided by LCAAP indicate, however, that the waste contained in the south landfill cell may also leach significant concentrations of antimony.

Furthermore, the Agency believes that data from the analyses of samples collected from the existing ground-water monitoring system at the solid waste landfill indicate that the petitioned unit may have contributed to ground-water contamination. Specifically, the Agency believes that the ground-water monitoring data from the existing well system are not adequate to eliminate the south landfill cell as a source of ground-water contamination and, to the contrary, provide a basis for concluding that the south landfill cell waste may be contributing to ground-water contamination. Furthermore, the Agency believes that the petitioned waste's potential to contribute to ground-water contamination is a sufficient basis for denial of LCAAP's petition because the Agency, in its evaluation of a petition, must determine whether factors (including additional constituents) could cause the petitioned waste to be hazardous (see 40 CFR 260.22(a)(2)).

For these reasons, the Agency proposes to deny the petition submitted by the Lake City Army Ammunitions

Plant, Independence, Missouri for exclusion of its wastewater treatment sludges described in its petition as EPA Hazardous Waste No. K046 and contained in its south landfill cell. This waste should continue to be subject to regulation under 40 CFR Parts 260 through 268 and the permitting standards of 40 CFR Part 270.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would not change the existing requirements for persons generating hazardous wastes. This facility has been obligated to manage its waste as hazardous before and during the Agency's review of its petition. Because a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this denial should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administration Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

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

V. Regulatory Flexibility Act

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

This amendment, if promulgated, will not have an adverse economic impact on small entities. The facility included in this notice may be considered a small entity, however, this rule only affects one facility in one industrial segment. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significantly economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. Law 96–511, 44 U.S.C. 3501 *et. seq.*) and have been assigned OMB Control Number 2050–0053.

VII. List of Subjects in 40 CFR Part 261

Hazardous Materials, Waste Treatment and Disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: July 27, 1989.

Walter W. Kovalick, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 89–18597 Filed 8–8–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 302 and 355

[FRL–3626–1]

Reporting and Liability Exemptions for Federally Permitted Releases of Hazardous Substances

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

ACTION: Supplemental notice to proposed rule; extension of comment period.

SUMMARY: On July 19, 1989, the U.S. Environmental Protection Agency (EPA) published a Notice of Proposed Rulemaking (NPRM) to define the scope of the exemption from reporting and liability for "federally permitted releases" under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. On July 11, 1989, EPA published a Supplemental Notice addressing certain aspects of the proposed scope of the CERCLA exemption for releases permitted under the Clean Air Act, to solicit comments on these issues. Today, EPA is extending the comment period on the Supplemental Notice from August 10, 1989, to September 10, 1989.

DATES: Comments must be received on or before September 10, 1989.

ADDRESSES: Comments should be submitted in triplicate to: Emergency Response Division, Superfund Docket Clerk, Attention: Docket Number 101(10) FPR, Room 2427M, (OS–210), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Copies of materials relevant to this rulemaking are kept in Room 2427M, at the above address. The docket is available for inspection between 9 a.m. and 4 p.m. Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 1–202/382–3046. As provided in 40 CFR Part 2, a reasonable fee (the first 50 pages are free and each additional page costs $.20) may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Hubert Watters, Project Officer, Response Standards and Criteria Branch, Emergency Reponse Division (OS–210), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, 1–202/382–2463; or the RCRA/Superfund Hotline at 1–800/424–9346; in Washington, DC, 1–202–382–3000.

SUPPLEMENTARY INFORMATION: On July 19, 1988, EPA proposed a rule (53 FR 27268) to clarify reporting exemptions for federally permitted releases of hazardous substances under section 101(10) of CERCLA (40 CFR Parts 117, 302, and 355). On July 11, 1989, EPA published a Supplemental Notice (54 FR 29306) addressing certain aspects of the proposed scope of the CERCLA section 101(10)(H) exemption for releases permitted under the Clean Air Act (40 CFR Parts 302 and 355). The Agency requested comments on the Supplemental Notice, which were to be received by August 10, 1989.

EPA has received requests from members of the regulated community for an extension of the comment period to allow time to prepare their responses. The Agency has decided to extend the comment period until September 10, 1989, to provide members of the public with additional time to review and comment on the Supplemental Notice.

Dated: August 4, 1989.

Robert L. Duprey,

Acting Assistant Administrator.

[FR Doc. 89-18733 Filed 8-8-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-332, RM-6720]

Radio Broadcasting Services; Defuniak Springs, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Defuniak Communications, Inc. ("petitioner") seeking the substitution of Channel 276C2 for Channel 276A at Defuniak Springs, Florida, and the modification of its license for Station WQUH(FM) to specify operation on the higher class co-channel. The coordinates for this allotment are 30-42-27 and 86-11-48. In accordance with Section 1.420(g) of the Commission's rules, we shall not accept competing expressions of interest in the use of Channel 276C2 at Defuniak Springs or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before September 25, 1989, and reply comments on or before October 10, 1989.

ADDRESSES: 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: Defuniak Communications, Inc., P.O. Box 986, Brentwood, TN 37027-0986 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-332, adopted July 20, 1989, and released August 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.

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. 89-18633 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-331, RM-6737]

Radio Broadcasting Services; Bartonville, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Willis Jordan proposing the allotment of Channel 260A to Bartonville, Illinois, as that community's first local FM service. The coordinates for this proposal are 40-40-28 and 89-40-07.

DATES: Comments must be filed on or before September 25, 1989, and reply comments on or before October 10, 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: Harry C. Martin, Reddy, Begley & Martin 2033 M Street, NW., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J.Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-331, adopted July 20, 1989, and released August 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.

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, Allocation Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18634 Filed 8-8-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-334, RM-6716]

Radio Broadcasting Services, Stuart, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Coon Valley Communications seeking the allotment of Channel 251A to Stuart, Iowa, as the community's first local FM service. Channel 251A can be allotted to Stuart in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 41-30-18 and West Longitude 94-19-06.

DATES: Comments must be filed on or before, September 25, 1989, and reply comments on or before October 10, 1989.

ADDRESSES: 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: Coon Valley

Communications, Box 40, Stuart, Iowa 50250 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Medica Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–334, adopted July 13, 1989, and released August 3, 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* 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 Kensinger,

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

[FR Doc. 89–18580 Filed 8–8–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–325, RM–6719]

Radio Broadcasting Services; Caro, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Prime Time Radio, Inc., proposing the substitution of FM Channel 221A for 285A at Caro, Michigan, and modification of its license for Station WIDL, to reflect the new channel. concurrence of the Canadian government will be obtained for the allotment of Channel 221A at Caro at coordinates 43–28–51 and 83–20–31.

DATES: Comments must be filed on or before September 25, 1989, and reply comments on or before October 10, 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: Robert Benkleman, President, Prime Time Radio, Inc., 1184 Cleaver Road, Caro, Michigan 48723.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–325, adopted July 13, 1989, and released August 2, 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 1.1204(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 Kensinger,

Chief, Allocations Branch, Policy And Rules Division, Mass Media Bureau.

[FR Doc. 89–18581 Filed 8–8–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–335, RM–6743]

Radio Broadcasting Services; Cloquet, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by WKLK, Inc., proposing the allotment of FM Channel 243A to Cloquet, Minnesota, as that community's second FM broadcast service. Canadian concurrence will be obtained for the allotment of Channel 243A at Cloquet at coordinates 46–43–12 and 92–28–12.

DATES: Comments must be filed on or before September 25, 1989, and reply comments on or before October 10, 1989.

ADDRESSES: 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: John E. Carl, President, WKLK, Inc., Rt. 2, Box 325B, Kellogg, Iowa 50135.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–335, adopted July 11, 1989, and released August 3, 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 1.1204(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 Kensinger,

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

[FR Doc. 89–18582 Filed 8–8–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89-328, RM-6777]

Radio Broadcasting Services; Belvidere, NJ, Scranton, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by WRNJ-Daytimer seeking the allotment of Channel 296A to Belvidere, NJ, as the community's first local FM service. In addition, WRNJ-Daytimer requests the substitution of Channel 295A for Channel 296A at Scranton, PA, and the modification of The Scranton Times' license for Station WEZX accordingly. Channel 296A can be allotted to Belvidere in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.3 kilometers (2.1 miles north to avoid a short-spacing to Station WKDN, Channel 295B, Camden, NJ, and to Station WBYO, Channel 298B, Boyertown, PA. The coordinates for the Belvidere allotment are North Latitude 40–51–17 and West Longitude 75–04–50. Channel 295A can be allotted to Scranton, PA, in compliance with the Commission's minimum distance separation requirements and can be used at Station WEZX's present transmitter site. The cordinates for the Scranton allotment are North Latitude 41–25–41 and West Longitude 75–44–50. Canadian concurrence in the Scranton allotment is required since the community is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before September 25, 1989, and reply comments on or before October 10, 1989.

ADDRESSES: 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: Lawrence Roberts, Esq., Mark N. Lipp, Esq., Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, NW., Suite 500, Washington, DC 20036 (Counsel to WRNJ-Daytimer).

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 and Order to Show Cause, MM Docket No 89–328, adopted July 20, 1989, and released August 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. 89–18635 Filed 8–8–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 890327, RM-6779]

Radio Broadcasting Services; Longwood, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Great Southern Media seeking the allotment of Channel 235A to Longwood, NC, as its first local service. The Commission seeks further information as to the status of Longwood as a community for allotment purposes. Channel 235A can be allotted to Longwood in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) southwest to avoid a short-spacing to Station WRNS, Channel 236C, Kinston, NC. The coordinates for this allotment are North Latitude 33–58–41 and West Longitude 78–34–36.

DATES: Comments must be filed on or before September 25, 1989, and reply comments on or before October 10, 1989.

ADDRESSES: 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: William J. Pennington, III, Great Southern Media, 5519 Rockingham Road-East, Greensboro, North Carolina 27407 (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. 89–327, adopted July 20, 1989, and released August 3, 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* 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. 89–18583 Filed 8–8–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89-329, RM-6781]

Radio Broadcasting Services; Atlantic, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Great Southern Media seeking the allotment of Channel 297A to Atlantic, North Carolina, as its first local FM service.

Channel 297A can be allotted to Atlantic in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 34–53–30 and West Longitude 76–20–24. Petitioner is requested to furnish additional information to establish Atlantic's status as a community for allotment purposes.

DATES: Comments must be filed on or before September 28, 1989, and reply comments on or before October 13, 1989.

ADDRESSES: 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: William J. Pennington III, 5519 Rockingham Road—East, Greensboro, North Carolina 27407 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synposis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–328, adopted July 20, 1989, and released August 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* contracts.

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. 89–18636 Filed 8–8–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–326, RM–6765; RM–6782]

Radio Broadcasting Services; Shallotte, Carolina Beach and Kure Beach, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission requests comments on two mutually exclusive petitions for rule making. Beach Broadcasting of North Carolina, Inc. requests the substitution of Channel 252A for Channel 292A at Shallotte, North Carolina, the modification of its license for Station WPGO–FM accordingly, and the allotment of Channel 292A to Carolina Beach, North Carolina, as the community's first local FM service. Hendrix Broadcasting requests the allotment of Channel 294A to Kure Beach, North Carolina, as its first local FM service. Kure Beach and Carolina Beach are located less than the minimum distance separation for second adjacent Class A channels. Channel 252A can be allotted to Shallotte in compliance with the Commission's minimum distance separation requirements and can be used at the present tramsmitter site of Station WPGO–FM. Channel 292A can be allotted to Carolina Beach with a site restriction of 8.6 kilometers (5.4 miles) south to avoid a short-spacing to Station WSFL–FM, Channel 293C1, New Bern, North Carolina, or alternatively Channel 294A can be allotted to Kure Beach with a site restriction of 2.5 kilometers (1.6 miles) southwest to aviod a short-spacing to Station WSFL–FM at New Bern. The coordinates for Channel 252A at Shallotte are North Latitude 34–02–50 and West Longitude 78–16–12. The coordinates for Channel 292A at Carolina Beach are North Latitude 33–57–45 and West Longitude 77–55–45. The coordinates for Channel 294A at Kure Beach are North Latitude 33–58–37 and West Longitude 77–55–12.

DATE: Comments must be filed on or before September 25, 1989, and reply comments on or before Obtober 10, 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: Jerrold Miller, Esq., Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel to Beach Broadcasting) and Dale Hendrix, Hendrix Broadcasting, 126 South Jefferson, Aurora, Missouri 65605 (Petitioner for Kure Beach).

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. 89–326, adopted July 20, 1989, and released August 3, 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 Steet, 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 mattter 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. 89–18584 Filed 8–8–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–330, RM–6722]

Radio Broadcasting Services; Altoona, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Margaret Keefer proposing the allotment of Channel 251A to Altoona, Wisconsin, as that community's first local FM service. Channel 251A can be allotted to Altoona in compliance with the Commission's minimum separation requirements at the

city reference coordinates, which are 44–48–26 and 91–26–49.

DATES: Comments must be filed on or before September 25, 1989, and reply comments on or before October 10, 1989.

ADDRESSES: 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: Margaret Keefer, 811 Duke, Rice Lake, WI 54868 (Petitioner); and Larry G. Fuss, Consultant, Contemporary Communications, P.O. Box 4010, Opelika, AL 36803 (Consultant to 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. 89–330, adopted July 19, 1989, and released August 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Member 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. 89–18637 Filed 8–8–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 85–81; RM–4883]

Television Broadcasting Services; San Clemente & Brawley, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Steve Mewhort seeking the allotment of UHF television Channel *26 to San Clemente, as well as the substitution of Channel *48 for Channel *26 at Brawley, California, to accommodate the proposal, based on the petitioner's failure to file supporting comments. See 52 FR 52971, December 27, 1985. With this action, the proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 85–81, adopted June 28, 1989, and released July 21, 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

Television broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bueau.

[FR Doc. 89–18638 Filed 8–8–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–336, RM–6800]

Television Broadcasting Services; Paradise and Chico, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Sainte Limited, requesting that reserved UHF Channel *30 at Chico be dereserved and substituted for UHF Channel 46 at Paradise, California, that UHF Channel 46 be allotted to Chico as a reserved educational channel, and that Sainte's construction permit for Station KBCP be modified to specify operation on Channel 30.

DATES: Comments must be filed on or before September 25, 1989, and reply comments on or before October 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Arthur Scrutchins, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–336, adopted July 11, 1989, and released August 3, 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 Section 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 Kensinger,

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

[FR Doc. 89–18585 Filed 8–8–89; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 54, No. 152
Wednesday, August 9, 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

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.

Date and Time: September 6–7, 1989, 8:30 a.m.–5:00 p.m. September 8, 1989, 9:30 a.m.–5:00 p.m.

Place: Oregon State University Memorial Union, Board Room—September 6–7, 1989, Corvallis, Oregon 97331–5103. Hatfield Marine Science Center, September 8, 1989, Newport, Oregon 97365.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.

Contact Person for Agenda and More Information: Dr. John A. Naegele, Executive Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Room 328, Aerospace Building, Washington, D.C. 20250–2200, Telephone: 202–447–4587.

Done at Washington, DC, this 1st day of August 1989.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 89–18596 Filed 8–8–89; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Availability of Boundaries and Classifications of Portions of the Merced and South Fork Merced Wild and Scenic Rivers

AGENCY: Forest Service, Agriculture.

ACTION: Notice of availability.

SUMMARY: The boundaries and classifications of portions of the Merced and South Fork Merced Wild and Scenic Rivers administered by the Forest Service are available at the following Forest Service locations: Office of the Chief of the Forest Service, 12th and Independence Avenue SW., Washington, DC 20250; Sierra National Forest, 1130 "O" Street, Fresno, CA 93721; and Pacific Southwest Regional Office, 630 Sansome Street, San Franciso, CA 94111.

Joyce T. Muraoka,

Director, Planning and Budget.

[FR Doc. 89–18567 Filed 8–8–89; 8:45 am]

BILLING CODE 3410–11–M

Environmental Impact Statement for the Proposed Valbois Destination Resort Village, Special Use Permit, Boise National Forest, Valley County, ID

AGENCY: Forest Service, USDA.

ACTION: Extension of time period for public review of the Draft Environmental Impact Statement.

INFORMATION: Notice of filing a draft environmental impact statement (DEIS) for the Valbois Destination Resort Village was published in the Federal Register on June 30, 1989. Comments were due by August 14, 1989. The period for commenting is now extended 30 days until September 13, 1989. This extension has been granted in response to requests from a number of parties. The additional period provides needed time for parties to review and formulate comments on this large and complex proposal, while still being responsive to the developer's timeframe needs.

DATE: Comments on the DEIS must be received by September 13, 1989.

ADDRESS: Send written comments to the Forest Supervisor, Boise National Forest, 1750 Front Street, Boise, ID 83702.

FOR FURTHER INFORMATION CONTACT: Greg Spangenberg (208) 364–4104.

August 2, 1989.

Dave Rittersbacher,

Forest Supervisor.

[FR Doc. 89–18587 Filed 8–8–89; 8:45 am]

BILLING CODE 3410–11–M

Cove-Mallard Area Access and Development; Nez Perce National Forest; Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: On March 12, 1986, notice was published in the **Federal Register** [51 FR 8524] that an environmental impact statement would be prepared to assess the effects of a transportation system and associated timber sales within the Jersey Creek, Noble Creek, and Big Mallard Creek areas on the Red River Ranger District, Nez Perce National Forest.

That notice is hereby cancelled.

Analysis of these projects began on schedule, but was delayed until the Nez Perce National Forest Plan was approved in October, 1987. Further analysis after that date indicated that the scope of the proposed action was likely too broad for reasonably thorough site-specific treatment in a single environmental impact statement. As a result of this additional analysis, two separate proposed actions have been formulated and each will be treated in a separate environmental impact statement. Notices of Intent to prepare these two environmental impact statements will appear in the **Federal Register** later this month.

DATE: This action is effective upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Mark Peterson, Supervisory Forester, Red River Ranger District, Elk City, Idaho 83525, (208) 842–2255.

Tom Kovalicky,

Forest Supervisor.

Date: August 1, 1989.

[FR Doc. 89–18568 Filed 8–8–89; 8:45 am]

BILLING CODE 3410–11–M

Big Creek Reforestation; Stanislaus National Forest, Tuolumne County, CA; Intent To Prepare an Environmental Impact Statement

The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement for proposed reforestation of a portion of the area burned in the Stanislaus Complex Fire of 1987. This analysis includes approximately 11,000 acres on the Groveland Ranger District.

The purpose of the proposed reforestation project is to contribute toward the attainment of goals identified in the Stanislaus National Forest Timber Management Plan and the Groveland Ranger District Multiple Use Plan. These goals include providing a continuous supply of timber products and growing and maintaining a healthy, productive forest.

Several alternatives will be considered for this proposed reforestation project. One alternative will be to take no action to achieve reforestation. Other alternatives will include combinations of hand, mechanical or chemical (herbicide) treatments and controlled burning, for the purposes of site preparation for planting, and release of conifer seedlings from competition. Both plantation survival and tree growth will be emphasized.

The project area is located in Tuolumne County, California, in the following townships, ranges and sections (Mount Diablo Base Meridian): T. 1 S., R. 17 E., sections 25 and 36; T. 1 S., R. 18 E., sections 1–5 and 8–36; T. 2 S., R. 18 E., sections 1–5 and 11–13; 6; T. 1 S., R. 19 E., sections 1–24 and 26–35; and T. 2 S., R. 19 E., sections 4–10 and 16–18.

Federal, State, and local agencies; private landowners within and adjacent to the proposed project area; forest user groups; special use permitees; and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process. This process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of issues covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Blaine L. Cornell, Forest Supervisor, Stanislaus National Forest, Sonora, California, is the responsible official.

The analysis is expected to take about three months. The draft environmental impact statement should be available for public reivew by May 1990. The final environmental impact statement is scheduled to be completed by August 1990.

Written comments and suggestions concerning the analysis should be sent to Kit Perlee, District Ranger, Groveland Ranger District, Star Route Box 75G, Groveland, California 95321, by September 11, 1989.

Questions about the proposed action and environmental impact statement should be directed to John Schmechel, District Silviculturist, Groveland Ranger District, phone 209–962–7825.

Date: August 1, 1969.

Blaine L. Cornell,

Forest Supervisor.

[FR Doc. 89–18570 Filed 8–8–89; 8:45 am]

BILLING CODE 3410–11–M

Hamm-Hasloe Reforestation; Stanislaus National Forest, Tuolumne and Mariposa Counties, CA; Intent To Prepare an Environmental Impact Statement

The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement for proposed reforestation of a portion of the area burned in the Stanislaus Complex Fire of 1987. This analysis includes approximately 21,000 acres on the Groveland Ranger District.

The purpose of the proposed reforestation project is to contribute toward the attainment of goals identified in the Stanislaus National Forest Timber Management Plan and the Groveland Ranger District Multiple Use Plan. These goals include providing a continuous supply of timber products and growing and maintaining a healthy, productive forest.

Several alternatives will be considered for this proposed reforestation project. One alternative will be to take no action to achieve reforestation. Other alternatives will include combinations of hand, mechanical or chemical (herbicide) treatments and controlled burning, for the purposes of site preparation for planting, and released of conifer seedlings from competition. Both plantation survival and tree growth will be emphasized.

The project area is located in Tuolumne and Mariposa Counties, California, in the following townships, ranges and sections (Mount Diablo Base Meridian): T.1S., R.17E., sections 6–8 and 16–36; T.2S., R.17E., sections 1–36; T.3S., R.17E., sections 1–6; T.2S., R.18E., sections 3–9 and 16–20; and T.3S., R.18E., section 6.

Federal, State, and local agencies; private landowners within and adjacent to the proposed project area; forst user groups; special use permitees; and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping processing. This process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of issues covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Blaine L. Cornell, Forest Supervisor, Stanislaus National Forest, Sonora, California, is the responsible official.

The analysis is expected to take about three months. The draft environmental impact statement should be available for public review by March 1990. The final environmental impact statement is scheduled to be completed by June 1990.

Written comments and suggestions concerning the analysis should be sent to Kit Perlee, District Ranger, Groveland Ranger District, Star Route Box 75G, Groveland, California 95321, by September 11, 1989.

Questions about the proposed action and environmental impact statement should be directed to John Schmechel, District Silviculturist, Groveland Ranger District, phone 209–962–7825.

Blaine L. Cornell,

Forest Supervisor.

Date: August, 1, 1989.

[FR Doc. 89–18573 Filed 8–8–89; 8:45 am]

BILLING CODE 3410–11–M

Jawbone Reforestation; Stanislaus National Forest Tuolumne County, CA; Intent To Prepare an Environmental Impact Statement

The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement for proposed reforestation of a portion of the area burned in the Stanislaus Complex Fire of 1987. This analysis includes approximately 15,000 acres on the Mi-Wok and Groveland Ranger Districts.

The purpose of the proposed reforestation project is to contribute toward the attachment of goals identified in the Stanislaus National Forest Timber Management Plan and the Mi-Wok and Groveland Ranger District Multiple Use Plans. These goals include providing a continuous supply of timber products and growing and maintaining a healthy, productive forest.

Several alternatives will be considered for this proposed reforestation project. One alternative will be to take no action to achieve

reforestation. Other alternatives will include combinations of hand, mechanical or chemical (herbicide) treatments and controlled burning, for the purposes of site preparation for planting, and release of conifer seedlings from competition. Both plantation survival and tree growth will be emphasized.

The project area is located in Tuolumne County, California, in the following townships, ranges, and sections (Mount Diablo Base Meridian): T.1N., R.17E., sections 24–28 and 32–36; T.1S., R.17E., sections 1–5 and 8–12; T.1S., R.18E., sections 3–6, 7 and 18; T.1N., R.18E., sections 5–8 and 17–36; T.2N., R.18E., sections 12–16 and 19–36; T.2N., R.19E., sections 5–18, 15–22 and 27–34; and T.1N., R.19E., sections 4–6, 8–9, 16–21 and 28–33.

Federal, State, and local agencies; private landowners within and adjacent to the proposed project area; forest user groups; special use permittees; and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process. This process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of issues covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Blaine L. Cornell, Forest Supervisor, Stanislaus National Forest, Sonora, California, is the responsible official.

The analysis is expected to take about three months. The draft environmental impact statement should be available for public review by January 1990. The final environmental impact statement is scheduled to be completed by March 1990.

Written comments and suggestions concerning the analysis should be sent to Gerald J. Kowalski, District Ranger, Mi-Wok Ranger District, P.O. Box 100, Mi-Wuk Village, California 95346, by September 11, 1989.

Questions about the proposed action and environmental impact statement should be directed to Joseph W. Sherlock, District Silviculturist, Mi-Wok Ranger District, phone 209–586–3234.

Date: August 1, 1989.

Blaine L. Cornell,

Forest Supervisor.

[FR Doc. 89–18571 Filed 8–8–89; 8:45 am]

BILLING CODE 3410–11–M

Larson Reforestation; Stanislaus National Forest, Mariposa County, California; Intent to Prepare an Environmental Impact Statement

The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement for proposed reforestation of a portion of the area burned in the Stanislaus Complex Fire of 1987. This analysis includes approximately 27,000 acres on the Groveland Ranger District.

The purpose of the proposed reforestation project is to contribute toward the attainment of goals identified in the Stanislaus national Forest Timber Management Plan and the Groveland Ranger District Multiple Use Plan. These goals include providing a continuous supply of timber products and growing and maintaining a healthy, productive forest.

Several alternatives will be considered for this proposed reforestation project. One alternative will be to take no action to achieve reforestation. Other alternatives will include combinations of hand, mechanical or chemical (herbicide) treatments and controlled burning, for the purposes of site preparation for planting, and release of conifer seedlings from competition. Both plantation survival and tree growth will be emphasized.

The project area is located in Mariposa County, California, in the following townships, ranges and sections (Mount Diablo Base Meridian): T. 2S., R. 18 E., sections 3, 9–11, 13–17 and 19–36; T. 3S., R. 18 E., sections 1–24; T. 2S., R. 19 E., sections 9–10 and 15–36; T. 3S., R. 19 E., sections 1–22; T. 2S., R. 20 E., sections 29–32; and T. 3S, R. 20E., sections 4–9 and 16–18.

Federal, State, and local agencies; private landowners within and adjacent to the proposed project area; forest user groups; special use permittees; and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process. This process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of issues covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Blaine L. Cornell, Forest Supervisor, Stanislaus National Forest, Sonora, California, is the responsible official.

The analysis is expected to take about three months. The draft environmental impact statement should be available for public review by April 1990. The final environmental impact statement is scheduled to be completed by July 1990.

Written comments and suggestions concerning the analysis should be sent to Kit Perlee, District Ranger, Groveland Ranger District, Star Route Box 75G, Groveland, California 95321, by September 11, 1989.

Questions about the proposed action and environmental impact statement should be directed to John Schmechel, District Silviculturist, Groveland Ranger District, phone 209–962–7825.

Blaine L. Cornell,

Forest Supervisor.

Date: August 1, 1989.

[FR Doc. 89–18569 Filed 8–8–89; 8:45 am]

BILLING CODE 3410–11–M

Paper Reforestation; Stanislaus National Forest Tuolumne County, CA; Intent To Prepare an Environmental Impact Statement

The U.S. Department of Agricluture, Forest Service will prepare an environmental impact statment for proposed reforestation of a portion of the area burned in the Stanislaus Complex Fire of 1987. This analysis includes approximately 15,000 acres on the Mi-Wok Range District.

The purpose of the proposed reforestation project is to contribute toward the attainment of goals identified in the Stanislaus National Forest Timber Management Plan and the Mi-Wok Range District Multiple Use Plan. These goals include providing a continuous supply of timber products and growing and maintaining a healthy, productive forest.

Several alternatives will be considered for this proposed reforestation project. One alternative will be to take no action to achieve reforestation. Other alternatives will include combinations of hand, mechanical or chemical (herbicide) treatments and controlled burning, for the purposes of site preparation for planting, and release of conifer seedlings from competition. Both plantation survival and tree growth will be emphasized.

The project area is located in Tuolumne County, California, in the following townships, ranges and sections (Mount Diablo Base Meridian):, T. 1 N., R. 1 6E., sections 1–3, 10, 11, 13–16 and 21–36; T. 2 N., R. 1 6E., sections 25, 26 and 34–36; T. 2 N., R. 17 E., sections 30, 31 and 34–36; and T. 1 N., R. 17 E., sections 1–23 and 28–32.

Federal, State, and local agencies; private landowners within and adjacent to the proposed project area; forest user

groups; special use permitees; and other individuals or ogranaizations who may be interested in or affected by the decision are invited to participate in the scoping process. This process includes:

1. Identification of potential issues.

2. Identification of issues covered by a previous environmental review.

4. Determination of potential cooperating agencies and assignment of responsibilities.

Blaine L. Cornell, Forest Supervisor, Stanislaus National Forest, Sonora, California, is the responsible official.

The analysis is expected to take about three months. The draft environmental impact statement should be available for public review by January 1990. The final environmental impact statement is scheduled to be completed by March 1990.

Written comments and suggestions concerning the analysis should be sent Gerald J. Kowalski, District Ranger, Mi-Wok Ranger District, P.O. Box 100, Mi-Wuk Village, California 95346, by September 11, 1989.

Questions about the proposed action and environmental impact statement should be directed to Joseph W. Sherlock, District Silviculturist, Mi-Wok Ranger District, phone 209–586–3234.

Blaine L. Cornell,

Forest Supervisor.

Dated: August 1, 1989.

[FR Doc. 89–18572 Filed 8–8–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Program, Coastal Energy Impact Program and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the American Samoa and Virgin Islands Coastal Management Programs, and the Puerto Rico (Jobos Bay) National Estuarine Research Reserve. Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. Section 315 of the CZMA requires the periodic review of the peformance of each estuarine research reserve with respect to its operation and management. The states/territories evaluated were found to be adhering to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing Coastal Management Programs were occurring with respect to the national coastal management objectives identified in section 303(2)(A)–(I) of the CZMA. A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone 202/673–5104).

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 89–18625 Filed 8–8–89; 8:45 am]

BILLING CODE 3510–08–M

Coastal Zone Management Programs and Estuarine Sanctuaries; Intent to Evaluate Performance

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resources Management (OCRM), announces its intent to evaluate the performance of the Alabama Coastal Management Program (CMP); Florida CMP; and Virginia CMP; and Georgia (Sapelo) National Estuarine Research Reserve (NERR) through September 30, 1989. Evaluation of coastal management programs will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings regarding the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2) (A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under the CZMA. Evaluation of the National Estuarine Research Reserves will be conducted pursuant to section 315(f) of the CZMA, which requires the periodic review of the performance of each reserve with respect to its operation and management. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies, and with members of the public. Public meetings will be held as part of the site visits. The respective state will issue notice of these meetings. Copies of each state's most recent performance report, as well as OCRM's notification letter and supplemental information request, if any, to the state are available upon request from the OCRM. Written comments from all interested parties on each of these programs are encouraged at this time. Please direct comments to John H. McLeod (see Further Contact below). OCRM will place subsequent notice in the **Federal Register** announcing the availability of the Final Findings based on each evaluation.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone: 202/673–5104).

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: August 2, 1989.

Thomas J. Maginnis.

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 89–18626 Filed 8–8–89; 8:45 am]

BILLING CODE 3510–08–M

Marine Mammals Permit Applications; Kenneth S. Norris, Randall S. Wells, Jan S. Ostman, Carl Schilt, and William T. Doyle (P20J)

Notice is hereby given that the Applicants have applied in due form for a Permit to take marine mammals as authorized by the marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicants: Dr. Kenneth S. Norris, Dr. Randall S. Wells, Mr. Jan S. Ostman, Mr. Carl Schilt, and Dr. William T.

Doyle, University of California, Institute of Marine Sciences, Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, CA 95060.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Hawaiian spinner dolphin (*Stenella longirostris*) 2,400.

4. Type of Take: To take by potential harassment by making 30 hukilau sets around spinner dolphin schools in order to define the size and dimensions of an opening in the net that will allow intact dolphin subgroups to swim out.

5. Location of Activity: Kona coast of the Big Island of Hawaii.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: August 2, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-18595 Filed 8-8-89; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Automated Patent System Industry Review Advisory Committee; Closed Meeting

AGENCY: Patent and Trademark Office, Commerce

DATES AND LOCATION: The meeting will convene August 21, 1989, at 9:00 a.m. and adjourn by 4:00 p.m. on August 22, 1989. The meeting, which is closed, will be held at the U.S. Patent and Trademark Office (PTO) in the Information Systems Conference Room, Two Crystal Park, 2121 Crystal Drive, Arlington, VA 22202.

SUMMARY: The Automated Patent System Industry Review Advisory Committee, consisting of nine members, was established on March 17, 1989 in accordance with the Federal Advisory Committee Act, with the approval of the Assistant Secretary for Administration. This Committee meeting agenda has two parts: (1) A review of actions taken/planned in response to recommendations by an Industry Review Board and (2) a discussion of PTO's proposed long-range plans for future development of the Automated Patent System and related systems. This meeting is closed to the public in accordance with section 552b(c)(4) of Title 5, U.S.C. because matters discussed at these meetings will disclose trade secrets and confidential financial information.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formerly determined on July 14, 1989, pursuant to section 10(d) of the Federal Advisory Committee Act, that the meeting may be properly closed because it is concerned with matters that are within the purview of 5 U.S.C. 552b(c)(4). A copy of the determination is available for public inspection in the Central Reference and Records Inspection Facility, Room 6219, Main Commerce.

FOR FURTHER INFORMATION CONTACT: Mr. Boyd Alexander, Deputy Assistant Commissioner for Information Systems, U.S. Patent and Trademark Office, Suite 1002, 2121 Crystal Drive, Arlington, VA 22202, telephone (703) 557-6000.

Dated: July 31, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89-18608 Filed 8-8-89; 8:45 am]

BILLING CODE 3510-16-M

Performance Review Board

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Announcement of Membership of the Patent and Trademark Office Performance Review Board.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the Patent and Trademark Office announces the appointment of persons to serve as members of its Peformance Review Board (PRB).

This notice announces the termination of the appointments and replacement of Rene D. Tegtmeyer and Robert F. Burnett, who have retired. Marilyn G. Wagner and Al L. Smith, whose terms expire on September 30, 1989, are also being replaced.

ADDRESS: Comments should be addressed to Personnel Officer, Patent and Trademark Office, Office of Personnel, One Crystal Park, Suite 700, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Carolyn P. Acree at the above address or (703) 557-2662.

SUPPLEMENTARY INFORMATION: The new membership of the Patent and Trademark Office Board is as follows:

Bradford R. Huther, Chairman, Assistant Commissioner for Finance and Planning, Patent and Trademark Office, Washington, DC 20231. Term—permanent

James E. Denny, Member, Acting, Assistant Commissioner for Patents, Patent and Trademark Office, Washington, DC 20231. Term—permanent

Jeffrey M. Samuels, Member, Assistant Commissioner for Trademarks, Patent and Trademark Office, Washington, DC 20231. Term—permanent

Theresa A. Brelsford, Member, Assistant Commissioner for Administration, Patent and Trademark Office, Washington, DC 20231. Term—permanent

Thomas P. Giammo, Member, Assistant Commissioner for Information Systems, Patent and Trademark Office Washington, C 20231. Term—permanent

Fred E. McKelvey, Member, Solicitor, Patent and Trademark office Washington, DC 20231. Term—expires September 30, 1992.

Dr. Michael G. Hansen, (Outside) Member, Director, Federal Executive Institute, Charlottesville, VA 22901. Term—expires September 30, 1992.

Edward Kubasiewicz, Member, Director, Patent Examining Group 250, Patent and Trademark Office, Washington, DC 20231. Term—expires September 30, 1992.

Dated: August 4, 1989

Carolyn P. Acree,

Personnel Officer.

[FR Doc. 89-18609 Filed 8-8-89; 8:45 am]

BILLING CODE 3510-16-M

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, DC headquarters located at Room 532, 2033 K Street NW., Washington, DC 20581, on August 28, 1989, beginning at 9 a.m. and lasting until 12:30 p.m. The agenda will consist of:

Agenda

1. Introductory remarks by Commissioner Kalo A. Hineman;
2. Review of events relating to expiration of Chicago Board of Trade July 1989 soybean futures contract;
3. Discussion of EFP (exchanges of futures for physicals) transactions;
4. Status report on CFTC reauthorization legislation; and
5. Other issues for Committee consideration; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on agricultural issues. The purposes and objectives of the Advisory Committee are more fully set forth in the May 9, 1989, third renewal charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Kalo A. Hineman, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Agricultural Advisory Committee, c/o Charles O. Conrad, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Mr. Conrad in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC, on August 3, 1989.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–18544 Filed 8–8–89; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; Deletion of Systems of Records Notices

AGENCY: Department of the Navy, DoD.

ACTION: Notice of deletion of systems of records.

SUMMARY: The Department of the Navy proposed to delete twenty-one systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: This action will be effective August 10, 1989.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP–09B30), Department of the Navy, Room 5E521, The Pentagon, Washington, DC 20350–2000, telephone: (202) 697–1459, Autovon: 227–1459.

SUPPLEMENTARY INFORMATION: Department of the Navy systems or records notices inventory subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

51 FR 12908, Apr 16, 1986
51 FR 18086, May 16, 1986 (Compilation, changes follow)
51 FR 19884, Jun 3, 1986
51 FR 30377, Aug 26, 1986
51 FR 30393, Aug 26, 1986
51 FR 45931, Dec 23, 1986
52 FR 2147, Jan 20, 1987
52 FR 2149, Jan 20, 1987
52 FR 8500, Mar 18, 1987
52 FR 15530, Apr 29, 1987
52 FR 22671, Jun 15, 1987
52 FR 45846, Dec 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, Jun 8, 1988
53 FR 22028, Jun 13, 1988
53 FR 25363, Jul 6, 1988
53 FR 39499, Oct 7, 1988
53 FR 41224, Oct 20, 1988
54 FR 14378, Apr 11, 1989

L.M. Bynun,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 4, 1989.

Deletions

N05880–1

System name: Federal Tort Claims Files (51 FR 18178, May 16, 1986).

Reason: This system has been incorporated into N05890–1, "Claims Information System".

N05890–2

System name: Affirmative Claims Files (51 FR 18180, May 16, 1986).

Reason: This system has been incorporated into N05890–1, "Claims Information System".

N05890–3

System name: Foreign Claims Files (51 FR 18181, May 16, 1986).

Reason: This system has been incorporated into N05890–1, "Claims Information System".

N05890–4

System name: Military Claims Files (51 FR 18182, May 16, 1986).

Reason: This system has been incorporated into N05890–1, "Claims Information System".

N05890–5

System name: Nonscope Claims Files (51 FR 18182, May 16, 1986).

Reason: This system has been incorporated into N05890–1, "Claims Information System".

N05890–6

System name: Military Personnel and Civilian Employees' Claims (51 FR 18183, May 16, 1986).

Reason: This system has been incorporated into N05890–1, "Claims Information System".

N05890–7

System name: U.S. Postal Service Indemnity Claims Files, (51 FR 18184, May 16, 1986).

Reasons: This system has been incorporated into N05890–1, "Claims Information System".

N01070–5

System name: Personnel Resources Information System for Management (PRISM), (51 FR 18096, May 16, 1986).

Reason: This system has been incorporated into N05300–2, "Administrative Personnel Management System".

N01533–1

System name: NROTC Educational Development Records, (51 FR 18115, May 16, 1986).

Reason: This system has been incorporated into N01500–2,

"NAVSCOLS/TIS, USMC Training Subsys".

N01770–1

System name: Decedent Affairs Records System, (51 FR 18122, May 16, 1986).

Reason: This system contains information which is retrievable only by the names of deceased individuals. Since deceased individuals do not fall within the coverage of the Privacy Act, this system is no longer needed.

N03461–1

System name: Summary Debriefs of Prisoners of War, (51 FR 18128, May 16, 1986).

Reason: This system is now under the Defense Intelligence Agency under system #LDIA 1728, "Southeast Asia Operational Casualty Records".

N04350–1

System name: Contract Field Service File, (51 FR 18136, May 16, 1986).

Reason: This system has been incorporated into N05300–2, "Administrative Personnel Management System".

N05101–2

System name: Sight Conservation Program, (51 FR 18144, May 16, 1986).

Reason: This system has been incorporated into N05300–2, "Administrative Personnel Management System".

N05353–1

System name: Treatment Effectiveness Assessment System, (51 FR 18152, May 16, 1986).

Reason: This program has been cancelled.

N05527–3

System name: Naval Educational Development, (51 FR 18161, May 16, 1986).

Reason: This system has been incorporated into N01500–2, "NAVSCOLS/TIS, USMC Training Subsys".

N05527–5

System name: Navy Central Clearance Group (NCCG) Records, (51 FR 18163, May 16, 1986).

Reason: This system has been incorporated into N05300–2, "Administrative Personnel Management System".

N06470–1

System name: USN/USMC Nuclear Test Personnel Review Program, (51 FR 18192, May 16, 1986).

Reason: This system is now under the Defense Nuclear Agency under system #HDNA 010, "Nuclear Test Participants".

N07300–2

System name: Resource Accounting and Project Tracking System, (RAPTS) (51 FR 18202, May 16, 1986).

Reason: This program has been cancelled.

N09593–1

System name: Naval Environmental Training System (NETS), (51 FR 18206, May 16, 1986).

Reason: This program has been cancelled.

N11101–3

System name: Family Housing Mock Utility System, (51 FR 18212, May 16, 1986).

Reason: This program has been cancelled.

N12950–1

System name: Career Development Program for Communicators, (51 FR 18220, May 16, 1986).

Reason: This program has been cancelled.

[FR Doc. 89–18663 Filed 8–9–89; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.117K]

Educational Research Grant Program; Proposed Funding Priority for Fiscal Year 1990

SUMMARY: The Secretary proposes to establish a funding priority by reserving a portion of the funds available for the Educational Research Grant Program for Fiscal Year 1990 to support research projects led by teachers in public and private elementary and secondary schools.

DATE: Comments must be received on or before September 8, 1989.

ADDRESS: Comments concerning this priority should be addressed to L. Ann Benjamin, Research Applications Division, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW. (Room 506e—M/S 1508), Washington, DC 20208–5643.

FOR FURTHER INFORMATION CONTACT: L. Ann Benjamin Telephone: (202) 357–6187.

SUPPLEMENTARY INFORMATION: The purpose of the Educational Research Grant Program (ERGP) is to support scientific inquiry designed to provide more dependable knowledge about the processes of learning and education.

Proposed Absolute Priority: The Secretary proposes to give an absolute preference for a portion of the funds available for the ERGP during fiscal year 1990 to applications that meet the priority described below. Only applications that meet this priority would be considered under this competition:

Teacher-led research projects endorsed by appropriate education officials. The Secretary proposes to support only those applications that are for teacher-led research projects. Teacher-led research projects are those in which one or more classroom teachers serve as principal investigator(s) for the project, although involvement of other personnel such as school administrators, supervisors of teachers, curriculum specialists, and staff developers may also be appropriate.

Each project in a public school must be endorsed by the appropriate officials of the local educational agency (LEA). Each project in a private school must be endorsed by the larger, local organization of private schools of which the school is a member, or if the school is not part of a larger, local organization of private schools, by appropriate officials at the school itself.

The Secretary also proposes that each grantee, in carrying out its teacher-led project, must address one or more of the following topics. Following each topic are examples, illustrative only, of specific study emphasis which might be included under that topic.

1. Teachers' roles and teaching function (e.g., instructional roles, roles as a professional educator, parent-teacher interactions in teaching).

2. Specific instructional processes and materials (e.g., effective teaching techniques, classroom management strategies, organizing learning groups).

3. Effective teaching of subject matter content (e.g., subject specific approaches, interdisciplinary strategies, examining appropriateness of content).

4. Approaches to professional development of educational personnel (e.g., in-service education, induction of beginning teachers, school-based preservice initiatives).

5. Alternative patterns of school management and organization (e.g., administrator-teacher shared decision-making, differentiated staffing, career ladder programs).

6. Ways for schools to find, understand, and use research and practice-based knowledge more effectively in local improvement initiatives (e.g., development of local problem-solving capacity, diagnosing

readiness for change, implementing and assessing research-based improvement).

7. More effective strategies to assess student, teacher or school indicators of excellence (e.g., student testing strategies, measurement of achievement of school-wide objectives, teacher performance assessment).

Invitation To Comment: Interested persons are invited to submit comments and recommendations regarding the proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, and 85; and (b) the regulations for this program in 34 CFR Part 700.

Program Authority: 20 U.S.C. 1221e.

Dated: July 17, 1989

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.117K; Educational Research Grant Program)

[FR Doc. 89-18602 Filed 8-8-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Intent to Make a Noncompetitive Financial Assistance Award; Colorado School of Mines

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7 (b)(2)(i)(B) and (D), competition for a grant has been restricted to the Colorado School of Mines (CSM), to conduct a summer Energy and Minerals Field Institute which will promote a better understanding of energy and minerals issues and problem areas by the participants and add significantly to their capability to analyze energy issues relating to one of the most important energy-producing regions in the Nation.

Scope: This grant will provide assistance required to support the Colorado School of Mines twelfth annual Summer Field Institute: to provide funding for July and August 1989 sessions.

Eligibility: The summer institute would be conducted by the Colorado School of Mines using its own resources: however, DOE support of this activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity. The Colorado School of Mines is a non-profit institution with exclusive domestic capability to perform this activity successfully. Eleven years of previous experience in conducting the summer institute has given CSM a capability that is currently unique. Therefore, DOE has determined that it is appropriate to be noncompetitive in its solicitation.

The term of this grant shall be one year from the effective date of award.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Witt, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-1570.

Thomas S. Keefe,

Director, Contract Operations Division 'B', Office of Procurement Operations.

[FR Doc. 89-18628 Filed 8-8-89; 8:45 am]

BILLING CODE 6450-01-M

Office for Assistant Secretary for International Affairs and Energy Emergencies, Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Indonesia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above-mentioned agreement involve approval of the following sales: Contract Number S-IE-9, for the sale of 149.966 grams of uranium depleted in the isotope uranium-235, 233.174 grams of natural uranium, and 3.003 grams of uranium enriched to an average of 23.286 percent in the isotope uranium-235 for use as standard reference materials by the National Atomic Energy Agency of Indonesia.

Contract Number S-IE-10, for the sale of 1 gram of uranium depleted in the isotope uranium-235, and 9.00 grams of uranium enriched to an average of 22.195 percent in the isotope uranium-235 for use as standard reference materials by the National Atomic Energy Agency of Indonesia.

Contract Number S-IE-11, for the sale of 149.966 grams of uranium depleted in the isotope uranium-235, 381.54 grams of natural uranium, and 4.002 grams of uranium enriched to an average of 17.463 percent in the isotope uranium-235 for use as standard reference materials by the United Nations Development Program, Jakarta, Indonesia.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: August 3, 1989.

Richard H. Williamson,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89-18627 Filed 8-8-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 2409-024, et al.]

Hydroelectric Applications (Calaveras County Water District, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Amendment of License.

b. *Project No.:* 2409-024.

c. *Date Filed:* June 2, 1989.

d. *Applicant:* Calaveras County Water District.

e. *Name of Project:* North Fork Stanislaus River, Hydroelectric Project.

f. *Location:* On the North Fork Stanislaus River, Stanislaus River, Highland Creek, Beaver Creek, Silver Creek, and Duck Creek in the Counties of Calaveras, Alpine, and Tuolomne, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Hari Modi, Project Director, Northern California Power Agency, 180 Cirby Way, Roseville, CA 95678 (916) 781-4204.

i. *FERC Contact:* Ken Fearon, (202) 376-9789.

j. *Comment Date:* September 13, 1989.

k. *Description of Amendment:* The amendment of license proposes to increase the rated capacity of the generating units at the Collierville Powerhouse from the authorized capacity of 205.2-MW to 256.8-MW. The applicant intends to utilize the run-off

between Spicer Meadow and McKays Point Diversion Dam, or additional releases from Spicer Meadow Dam when the run-off does not provide sufficient flows, to generate the additional capacity.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

2a. *Type of Application:* Surrender of License.

b. *Project No.:* 4369–009.

c. *Date Filed:* June 5, 1989.

d. *Applicant:* City of Anoka.

e. *Name of Project:* Coon Rapids Dam.

f. *Location:* In Anoka and Hennepin Counties, Minnesota, on the Mississippi River.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mark Nagel, City Manager, City of Anoka, Minnesota, 2015 First Avenue, Anoka, MN 55303, (612) 421–6630.

i. *FERC Contact:* Mary Nowak, (202) 376–9634.

j. *Comment Date:* September 7, 1989.

k. *Description of Project:* The license for this project was issued on May 29, 1987, for an installed capacity of 10.4 megawatts. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

3a. *Type of Application:* Surrender of License.

b. *Project No.:* 7806–012.

c. *Date Filed:* June 16, 1989.

d. *Applicant:* Richard J. Wilkinson and Georgenia M. Wilkinson.

e. *Name of Project:* Prospect Creek.

f. *Location:* On the licensee's land on Prospect Creek in Sanders County, Montana near the town of Thompson Falls. T21N R29W, section 18.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Richard J. and Georgenia M. Wilkinson, P.O. Box 848, Thompson Falls, MT 59873.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely at (202) 376–1669.

j. *Comment Date:* September 7, 1989.

k. *Description of Proposed Action:* The proposed project for which the license is being surrendered would have consisted of: (1) a 10-foot-high, 50-foot-long reinforced concrete diversion dam at elevation 2,555 feet; (2) a 6-foot-diameter, 4,170-foot-long penstock; (3) a powerhouse containing two generating units with a combined capacity of 2,900 kW; (4) a tailrace; (5) 2.4–kV generator leads; (6) a 2.4/4.16–kV step-up transformer; (7) a 200-foot-long, 4.16–kV transmission line tying into an existing Montana Power Company line; and (7) appurtenant facilities.

The licensee states that the project is not financially feasible at this time. Construction of the project has not begun.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

4a. *Type of Application:* Transfer of License.

b. *Project No.:* 8357–008.

c. *Date Filed:* June 30, 1989.

d. *Applicant:* Al Forward (transferor) and Highland Hydro Construction, Inc. (transferee).

e. *Name of Project:* Ponderosa/Bailey Creek.

f. *Location:* On Bailey Creek, near Manton in Shasta County, California.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Al Forward, Rt. 1, Box 325, Manton, CA 96059. Merle Williams, Vice President, Highland Hydro Construction, Inc., 2576 Hartnell Avenue, Redding, CA 96022, (916) 222–1414.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely at (202) 376–1669.

j. *Comment Date:* September 5, 1989.

k. *Description of Transfer:* On June 14, 1985, a minor license was issued to Al Forward for the construction, operation, and maintenance of the Ponderosa/Bailey Creek Project No. 8357. Mr. Al Forward has proposed to transfer the license to Highland Hydro Construction, Inc.

The transferee is a private corporation organized under the laws of the State of California.

The licensee certifies that it has fully complied with the terms and conditions of its license, as amended, and obligates itself to pay all annual charges accrued under the license to the date of the transfer. The transferee accepts all the terms and conditions of the license and agrees to be bound by them to the same extent as though it was the original licensee.

l. *This notice also consists of the following standard paragraphs:* B and C.

5a. *Type of Application:* Surrender of License.

b. *Project No.:* 9214–005.

c. *Date Filed:* June 14, 1989.

d. *Applicant:* Provo Hydro Associates.

e. *Name of Project:* Murdock Dam Hydro Project.

f. *Location:* On Provo River in Utah County, Utah.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Domonique Darne, 1900 L Street, N.W., Suite 608, Washington, DC 20036.

i. *FERC Contact:* Nanzo T. Coley, (202) 376–9416.

j. *Comment Date:* September 9, 1989.

k. *Description of Proposed Action:* The license to be surrendered would have included a project consisting of (1) a 60-inch-diameter, 6-foot-long penstock; (2) a powerhouse with an installed capacity of 200 kW under a head of 23 feet; (3) a tailrace returning the flow to the Provo River; (4) an underground 12.5–kV transmission line, about 100 feet long; and (5) appurtenant facilities. The applicant estimates the average annual energy output at 1,178,373 kWh. Energy produced at the project would have been sold to Utah Power and Light Company

l. *This notice also consists of the following standard paragraphs:* B and C, & D2.

6a. *Type of Application:* Minor License.

b. *Project No.:* 9765–001.

c. *Date filed:* February 16, 1989.

d. *Applicant:* Ramah Energy, Inc.

e. *Name of Project:* Big Sand Wash Dam.

f. *Location:* On Big Sand Wash, a tributary of Dry Gulch Creek, a tributary of the Duchesne River, in Duchesne County, Utah.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. James F. Smith, President, Ramah Energy, Inc., 291 East 200 North, Roosevelt, UT 84066.

i. *FERC Contact:* Michael Spencer at (202) 376–1669.

j. *Comment Date:* September 6, 1989.

k. *Description of Project:* The proposed project would utilize the Big Sand Wash Dam and Reservoir, owned by the Utah Board of Water Resources and operated and maintained by the Moon Lake Water Users Association, and would consist of: (1) the existing earthfill dam, 112 feet high and 795 feet long, with a crest elevation at 5,892 feet m.s.l.; (2) a reservoir having a capacity of 12,050 acre-feet at spillway elevation of 5,885 feet m.s.l.; (3) a new penstock utilizing the existing 40-inch-diameter outlet works conduit; (4) a new powerhouse containing two generating units with a combined capacity of 800 kW operating under an average head of 66.5 feet; (5) a tailrace returning flow to the stream a short distance downstream from the dam; (6) a new 13.8-kV transmission line, about one half mile long; and (7) appurtenant facilities. The applicant estimates that the average annual energy output would be 2,211,149 kWh and the total cost of construction would be $429,150.

l. *Purpose of Project:* Project power would be sold to the Moon Lake Electric

Association and/or Utah Power & Light Company.

m. *This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.*

7a. *Type of Filing:* Exemption (5-MW or less).

b. *Project No.:* 10610–000.

c. *Date Filed:* May 27, 1988.

d. *Applicant:* Trout Creek, Inc.

e. *Name of Project:* Trout Creek Hydroelectric Project.

f. *Location:* On Trout Creek near the town of Thatcher, in Caribou County, Idaho.

g. *Filed Pursuant to:* Section 408 of the Energy Security Act of 1980, U.S.C. 2705 and 2708 as amended.

h. *Applicant Contact:* John C. Arkoosh, P.O. Box 32, Gooding, ID 83330 (208) 934–8401.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* September 5, 1989.

k. *Description of project:* The proposed project would consist of: (1) an existing diversion structure at elevation 5,075 feet msl; (2) a 4-foot-deep, 12-foot-wide, 1,400-foot-long earthen canal; (3) a 36-inch-diameter, 750-foot-long pipeline leading to; (4) a powerhouse containing a single generating unit with an installed capacity of 330 kilowatt; (5) a 100-foot-long tailrace; and (6) a 0.25-mile-long, three phase transmission line. The applicant estimates the average annual energy generation to be 1,600 MWh.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility to Utah Power and Light Company.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D3a.

8a. *Type of Filing:* Exemption (5-MW or less).

b. *Project No.:* 10611–000.

c. *Date Filed:* May 27, 1988.

d. *Applicant:* Whiskey Creek, Inc.

e. *Name of Project:* Whiskey Creek Hydroelectric Project.

f. *Location:* On Whiskey Creek near the town of Thatcher, in Caribou County, Idaho.

g. *Filed Pursuant to:* Section 408 of the Energy Security Act of 1980, U.S.C. 2705 and 2708 as amended.

h. *Applicant Contact:* John C. Arkoosh, P.O. Box 32, Gooding, ID 83330 (208) 934–8401.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* September 5, 1989.

k. *Description of project:* The proposed project would consist of: (1) an existing diversion structure at elevation 5,110 feet msl; (2) a 36-inch-diameter, 1,650-long pipeline leading to; (3) a powerhouse containing a single generating unit with an installed capacity of 480 kilowatt; (4) a 100-foot-long tailrace; and (5) a 0.25-mile-long, three phase transmission line. The applicant estimates the average annual energy generation to be 2,400 MWh.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility to Utah Power and Light Company.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D3a.

9a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 10689–000.

c. *Date Filed:* November 4, 1988.

d. *Applicant:* Massachusetts Water Resources Authority, Waterworks Division.

e. *Name of Project:* Oakdale Power Plant Project.

f. *Location:* On the Quabbin Pressure Aqueduct at the Wachusett Reservoir in Worcester County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William A. Brutsch, Massachusetts Water Resources Authority, Waterworks Division, 100 First Avenue, Charlestown Navy Yard, Boston, MA 02129 (617) 242–6000.

i. *FERC Contact:* Ed Lee, (202) 376–5786.

j. *Comment Date:* September 5, 1989.

k. *Description of Project:* The existing operating project consists of: (1) one turbine-generator rated at 3,500 kW; and (2) appurtenant facilities. The project generates an average of 13,000 MWh annually. The project is owned by the Metropolitan District Commission. The project is operated and maintained by the applicant.

l. *Purpose of Project:* Project power would continue to be sold to the New England Power Company and Boston Edison Company.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, D3b.

10a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10749–000.

c. *Date Filed:* March 13, 1989.

d. *Applicant:* Iowa Hydropower Development Corporation.

e. *Name of Project:* Saylorville.

f. *Location:* On the Des Moines River in Polk County, Iowa.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Justin Rundle, 708 Iowa Avenue, Iowa City, IA 52240 (319) 337–9875.

i. *FERC Contact:* Charles T. Raabe, (202) 376–9778.

j. *Comment Date:* September 11, 1989.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Saylorville Dam and Reservoir and would consist of: (1) a proposed siphon penstock; (2) a proposed powerhouse containing two generating units having a total installed capacity of 12,480–kW; (3) a proposed tailrace; (4) a proposed short overhead transmission line; and (5) appurtenant facilities. The applicant estimates the average annual generation would be 30.69 GWh. The cost of the studies to be performed under the terms of the permit would be $15,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C & D2.

11a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10779–000.

c. *Date Filed:* May 15, 1989.

d. *Applicant:* Flannagan Power Company.

e. *Name of Project:* Flannagan Dam Project.

f. *Location:* On the Pound River near Clintwood, Dickenson County, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Richard E. Kessel, Sithe Energies USA, 135 East 57th St., 23rd Floor, New York, NY 10022 (212) 755–7300.

i. *FERC Contact:* Michael Dees (202) 376–9414.

j. *Comment Date:* September 7, 1989.

k. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' Flannagan Dam and reservoir and would consist of: (1) an existing intake structure and tunnel; (2) a proposed penstock 10 feet in diameter and 275 feet long; (3) a proposed powerhouse housing two hydropower units rated at 3.5MW each; (4) a proposed 69-kV transmission line three miles long; and (5) appurtenant facilities. The estimated annual energy production is 19 GWh. Project energy would be sold to a utility company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

12a *Type of Application:* Preliminary Permit.

b. *Project No.:* 10781–000.

c. *Date filed:* May 22, 1989.

d. *Applicant:* Dahlberg Light and Power Company.

e. *Name of Project:* Orienta Water Power Project.

f. *Location:* On the Iron River, in Bayfield County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mark F. Dahlberg, President, Dahlberg Light and Power Company, 104 South Pine Street, P.O. Box 8, Grantsburg, Wisconsin 54840–0008 (715) 463–5371.

i. *FERC Contact:* Mary Nowak (202) 376–9634.

j. *Comment Date:* September 7, 1989.

k. Description of Project: The proposed project would consist of the following facilities: (1) an existing concrete gravity dam 15 feet high and 240 feet long; (2) a proposed reservoir with a surface area of 133 acres and a total storage capacity of 370 acre-feet at a crest elevation of 665.3 feet mean sea level; (3) an existing penstock 103 feet long and 7 feet in diameter; (4) a reconstructed powerhouse containing one generating unit at a total installed capacity of 800 kilowatts; and (5) appurtenant facilities. The existing dam is owned by Dahlberg Light and Power Company. The applicant estimates that the cost of the studies under permit would be about $25,000. The applicant estimates that the average annual generation would be 2,714,240 kilowatthours.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

13a. *Type of Application*: Preliminary Permit.

b. *Project No.*:10787–000.

c. *Date Filed:* June 1, 1989.

d. *Applicant:* Pacific Hydro, Inc.

e. *Name of Project:* McLeod Ridge Hydroelectric Project.

f. *Location:* On North Fork of the Snoqualmie River in King County, Washington, near the town of North Bend. T24 N, Ranges 8E and 9E, sections 24 and 25.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r).

h. *Applicant Contact:* Lonnie Covin, Project Manager, Pacific Hydro, Inc., 1422 130th Ave., NE, Bellevue, WA 98005, Frank Frisk, Jr., Attorney-at-Law, Pacific Hydro, Inc., 1054 31st St., N.W., 2nd Floor, Washington, DC 20007; Mr. Harry Hall, Pacific Hydro, Inc., 50/116th North Avenue S.E., Suite 201, Bellevue, WA 98004.

i. *Commission Contact:* Ms. Deborah Frazier-Stutely (202) 376–1669.

j. *Comment Date:* September 6, 1989.

k. *Description of Project:* The proposed project would consist of: (1) an 11-foot-high, 180-foot-long ogee spillway diversion dam at elevation 949 feet; (2) a 23-foot-high 150-foot-long earthfill embankment at elevation 961 feet; (3) a 7,870-foot-long tunnel; (4) a 10-foot-diameter penstock bifurcating into two 7-foot-diameter penstocks; (5) a powerhouse to contain one or two generating units with an installed capacity of 25,000 kW producing an average annual energy output of 120,400 MWh (6) a 60-foot-long tailrace; (7) a 1,950-foot-long transmission line tying into the proposed Black Creek Project line (FERC No. 6221); and (8) three access roads for the purpose of project construction and operation.

The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $300,000, and that no new access road would be needed to conduct the studies.

l. *Purpose of Project:* Project power would be sold to Puget Power or another utility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

14a. *Type of Application*: Preliminary Permit.

b. *Project No.:* 10792–000.

c. *Date Filed:* June 5, 1989.

d. *Applicant:* Monia Hydro Corporation.

e. *Name of Project:* Monticello Mill Dam Project.

f. *Location:* On Maquoketa River Near Monticello, Jones County, Iowa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas Wilkinson, 700 Higley Bldg., P.O. Box 1968, Cedar Rapids, IA 52406 (319) 366–4990.

i. *FERC Contact:* Ed Lee (202) 376–5786.

j. *Comment Date:* September 15, 1989.

k. *Description of Project:* The proposed project would consist of: (1) an existing 43.4-foot-long and 16-foot-high concrete dam; (2) a 40-acre reservoir; (3) a new powerhouse housing one 310-kW generator; (4) a 1,800-foot-long, 38k-V transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 1,367 MWh. The cost of the work and studies to be performed under the permit would be $27,000. The site is owned by the Jones County Conservation Board, Center Junction, IA 52212. The applicant estimates that the power generated would be sold a local utility company.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

15a. *Type of Application*: Preliminary Permit.

b. *Project No.:* 10794–000.

c. *Date Filed:* June 5, 1989.

d. *Applicant:* Maria Hydro Corporation.

e. *Name of Project:* Marble Rock Mill Dam Project.

f. *Location:* On the Shell Rock River near Marble Rock, Floyd County, Iowa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas Wilkinson, 700 Higley Bldg., P.O. Box 1968, Cedar Rapids, IA 52406 (319) 366–4990.

i. *FERC Contact:* Ed Lee (202) 376–5786.

j. *Comment Date:* September 15, 1989.

k. *Description of Project:* The proposed project would consist of: (1) an existing 160-foot-long and 15-foot-high concrete dam; (2) an 55-acre reservoir; (3) a new powerhouse containing a single 658–kW generator; (4) a 50-foot-long, 13.8–kV transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 3,628 MWh. The cost of the work and studies to be performed under the permit would be $27,000. The site is owned by the City of Marble Rock, IA 50616. The applicant estimates that the power generated will be sold to a local utility company.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs: A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified coment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A6. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for

the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in Section 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are required, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, state and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 3, 1989, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 89–18556 Filed 8–8–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87–164–005 et al.]

Great Lakes Gas Transmission Co., Petition To Amend

August 2, 1989.

In the matter of Docket Nos. CP87–164–005 [1], CP87–474–006, CP88–307–005, CP88–310–003, and CP88–599–002.

Take notice that on July 19, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket Nos. CP87–164–005, CP87–474–006, CP88–307–005, CP88–310–003 and CP88–599–002, a petition to amend the orders issued in Docket Nos. CP87–164–000, CP87–474–000, CP88–307–000, CP88–310–000, and CP88–599–000, pursuant to Section 7(c) of the Natural Gas Act, so as to continue the transportation of natural gas, on an interruptible basis, for its respective customers in the above mentioned dockets, all as more fully set forth in the petition to amend which is

[1] These proceedings are not consolidated.

on file with the Commission and open to public inspection.

Great Lakes states that in each of the above-referenced proceedings, the Commission issued an order authorizing Great Lakes to transport natural gas for a particular customer, on an interruptible basis, for a term of the earlier of one year from the date of such order, or the date that Great Lakes accepts a blanket certificate issued by the Commission pursuant to Part 284 of its Regulations. Great Lakes further states that each of these customers has entered into arrangements with Great Lakes for continuation of the subject services, as described below. Great Lakes indicates that no new facilities would be required to provide continuation of the proposed services.

Great Lakes states that the specifics of each of the proceedings is as follows:

a. CP88-310-000: Under the contractual arrangements between Great Lakes and Peoples Natural Gas Company, a Division of UtiliCorp United Inc. (Peoples), Great Lakes states that it is authorized to transport up to 100,000 Mcf per day of gas during the Winter Period (October through April), and up to 30,000 Mcf per day during the Summer Period (May through September) from a point on the international border between the United States and Canada, near Emerson, Manitoba (Emerson Receipt Point) to a point near Carlton, Minnesota (Carlton Delivery Point), where the facilities of Great Lakes interconnect with those of Northern Natural Gas Company. The Commission's October 5, 1988 order, issued in Docket No. CP88-310-000, limited the term of the authorization as discussed above, it is stated. Great Lakes indicates that Peoples has requested that the transportation arrangements continue for an additional year, to October 5, 1990, as originally contemplated by the parties.

b. Docket No. CP87-164-000: Under the contractual arrangements between Great Lakes and Southeastern Michigan Gas Company (Southeastern), Great Lakes states that it is authorized to transport up to 20,000 Mcf of gas per day from the Emerson Receipt Point to a point near Muttonville, Michigan (Muttonville Delivery Point), where the facilities of Great Lakes interconnect with those of ANR Pipeline Company (ANR Pipeline). The Commission's December 10, 1988 order, issued in Docket No. CP87-164-003, limited the term of the authorization as discussed above, it is stated. Great Lakes indicates that Southeastern has requested that the transportation arrangements continue, and the parties have entered into an Amendatory Agreement dated April 21, 1989 which, *inter alia*, extends such service until November 1, 1990, and further provides for extension from contract year to contract year thereafter, unless terminated by either party.

c. Docket No. CP87-474-000: Under the contractual arrangements between Great Lakes and Ford Motor Company (Ford), Great Lakes states that it is authorized to transport up to 110,000 Mcf per day from the Emerson Receipt Point to (1) a point near Farwell, Michigan (Farwell Delivery Point) where the facilities of Great Lakes interconnect with those of ANR Pipeline; (2) a point near Belle River Mills, Michigan (Belle River Mills Delivery Point) where the facilities of Great Lakes interconnect with those of Michigan Consolidated Gas Company (MichCon); and (3) the Muttonville Delivery Point. The Commission's January 27, 1989 order, issued in Docket No. CP87-474-002, limited the term of the authorization as discussed above, it is stated. Great Lakes indicates that Ford has requested that the transportation arrangements continue for an additional year, as originally contemplated by the parties.

d. Docket No. CP88-307-000: Under the contractual arrangements between Great Lakes and Northern States Power Company (NSP), Great Lakes states that it is authorized to transport up to 30,000 Mcf per day from the Emerson Receipt Point to the Carlton Delivery Point. The Commission's October 31, 1988 order, issued in Docket No. CP88-307-000, limited the term of the authorization as described above, it is stated. Great Lakes indicates that NSP has requested that the transportation arrangements continue for an additional year, to October 31, 1990, as originally contemplated, it is stated. Great Lakes indicates that NSP has also advised that the subject gas will be used by NSP for its own system sypply, and the system supply of its affiliated company, Northern States Power Company, a Minnesota corporation.

e. Docket No. CP88-599-000: Under the contractual arrangements between Unicorp Energy Inc. (Unicorp), and Great Lakes, Great Lakes states that it is authorized to transport up to 15,000 Mcf per day from the Emerson Receipt Point to (1) the Farwell Delivery Point; (2) the Belle River Mills Delivery Point; (3) a point near Boyne City, Michigan where the facilities of Great Lakes interconnect with those of MichCon; and (4) a point near Fortune Lake, Michigan where the facilities of Great Lakes interconnnect with those of ANR Pipeline. The initial contractual arrangements provided for a contract term to end on November 1st of the first contract year and to be extended from year to year thereafter, unless terminated by either party, it is stated. The Commission's February 17, 1989 order, issued in Docket No. CP88-599-000, limited the term of the authorization as discussed above, it is further stated. Great Lakes indicates that Unicorp has requested that (1) the transportation arrangements continue as originally contemplated by the parties, and (2) the daily contract quantity be increased to 75,000 Mcf per day. Great Lakes further indicates that the parties have entered into an Amendatory Agreement dated April 21, 1989, which, *inter alia*, reflects these requests.

Great Lakes states that the transportation arrangements between Great Lakes and Southeastern, Ford, Peoples, NSP, and Unicorp, are filed, respectively, as Rate Scheduled T-19, T-20, T-21, T-22, and T-23, of Great Lakes' FERC Gas Tariff, Original Volume No. 21 and such Schedules would continue to govern the services for which a continuation of authorization is being requested in the instant application.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 23, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18558 Filed 8-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA88-4-37-009 and RP89-1-012]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

August 2, 1989.

Take notice that on July 26, 1989, Northwest Pipeline Corporation ("Northwest") in compliance with a Federal Energy Regulatory Commission ("Commission") order issued July 11, 1989 in the above-captioned dockets,

submitted the following tariff sheets to be a part of its FERC Gas Tariff.

Third Substitute Second Amended Thirty-Ninth Revised Sheet No. 10 (Effective April 1, 1988)
Third Substitute Fourth Amended Thirty-Ninth Revised Sheet No. 10 (Effective June 1, 1988)
Third Substitute Seventh Amended Thirty-Ninth Revised Sheet No. 10 (Effective July 1, 1988)
Third Amended Substitute Fortieth Revised Sheet No. 10 (Effective July 3, 1988)
Third Revised Sheet No. 11 (Effective October 1, 1988)

Northwest states that these tariff sheets reflect the recalculation of the PGA surcharge for the period April 1 through September 30, 1988, and Third Revised Sheet No. 11 reflects the restatement of the Account No. 191 net direct-bill amount pursuant to the July 11, 1989 order in the above referenced dockets.

A copy of this filing has been served on all parties and all jurisdictional sales customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC, 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before August 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-18559 Filed 8-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-3-56-000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

August 2, 1989.

Take notice that Valero Interstate Transmission Company ("Vitco"), on July 31, 1989 tendered for filing the following tariff sheets as required by Orders 483 and 483-A containing changes in Purchased Gas Cost Rates pursuant to such provisions.

FERC Gas Tariff, Original Volume No. 1
13th Revised Sheet No. 14.2
FERC Gas Tariff, Original Volume No. 2
18th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A.

The change in rates to Rate Schedule S-1, FERC Gas Tariff, Original Volume No. 2 includes a decrease in purchased gas costs of $2.3843 per MMBtu. The change in rates to Rate Schedule S-3 includes an increase in purchased gas cost of $.3247 per MMBtu.

The proposed effective take for the above filing is September 1, 1989. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by September 1, 1989.

Any person desiring to be heard to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with ¶¶ 385.215 and 385.211 of the Commission's Rules and Regulations. All such motions or protest should be filed on or before August 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 89-18560 Filed 8-8-89; 8:45 am]
BILLING CODE 6717-02-M

[Docket No. RP89-152-000]

Vesta Energy Corp. v. Williams Natural Gas Co.; Notice Granting Waiver

August 2, 1989.

On April 26, 1989, Vesta Energy Company (Vesta) filed a complaint against Williams Natural Gas Company (Williams) in the above-referenced docket alleging that Williams unlawfully retained quantities of Vesta's gas and improperly assessed imbalance overrun penalties against Vesta. On June 28, 1989, Williams filed an answer in response to Vesta's complaint. On June 28, 1989, Vesta filed a letter with the Commission requesting that it be given an opportunity to respond to Williams' answer, stating that Williams' answer is in the nature of a motion for summary disposition.

To the extent that Williams' filing may be construed as a motion for summary disposition, Vesta is granted waiver of the rules to file an answer. Vesta's answer is due within 30 days of the issuance of this notice.

Lois D. Cashell,
Secretary.

[FR Doc. 89-18557 Filed 8-8-89; 8:45 am]
BILLING CODE 6717-01-M

Office of Fossil Energy

[ERA Docket No. 88-01-NG]

Project Orange Associates, L.P., Application To Amend a Conditional Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application to amend a conditional order granting 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 May 18, 1989, of an application filed by Project Orange Associates, L.P. (Project Orange), to amend a conditional authorization to import natural gas from Canada granted by the Economic Regulatory Administration (ERA) on October 17, 1988, in DOE/ERA Opinion and Order No. 274 (Order 274). Project Orange is seeking interim authority to import interruptible supplies of gas through existing pipeline facilities until new facilities to accommodate firm deliveries are built.

Order 274 was originally issued in ERA Docket No. 88-01-NG to G.A.S. Orange Development, Inc. (1 ERA Para. 70,815). Subsequently, on December 19, 1988, the ERA approved the transfer of this conditional authority to Project Orange (unnumbered and unpublished order). Order 274 addressed various non-environmental issues and made initial findings regarding these issues. As stated in Order 274, the conditional determination is to be reconsidered after completion of the environmental review of impacts associated with construction and operation of certain pipeline facilities proposed by Tennessee Gas Pipeline Company (Tennessee) to provide firm transportation service for the gas from the international border near Niagara Falls, New York.

On January 6, 1989, the authority to regulate natural gas imports and exports was transferred from the ERA to FE. DOE Delegation Order No. 0204-127

specifies the transferred functions (54 FR 11436, March 20, 1989).

The application is filed under 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 September 8, 1989.

FOR FURTHER INFORMATION:

P. J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–4819

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, D.C. 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Project Orange is conditionally authorized under Order 274 to import up to 120 million MMBtu of Canadian gas from Noranda, Inc. (Noranda), over a term of 20 years beginning on the date of the initial delivery. The gas will be imported to fuel a new cogeneration facility to be built in Syracuse, New York. In the original January 5, 1988, import application, the commercial operation date of the cogeneration plant and the date on which initial deliveries would take place was projected to be June 30, 1990. The commercial operation date is now scheduled for March 1, 1991. The import authorization is conditioned upon completion of the environmental review of certain proposed facilities. The Federal Energy Regulatory Commission (FERC) has the lead in preparing the environmental analysis of the additional transmission facilities proposed by Tennessee to increase its system capacity. The capacity increase is necessary to transport the gas for Project Orange on a firm daily basis from Niagara Falls to a proposed interconnection with Project Orange south of Syracuse (FERC Docket No. 88–171–000). After the FERC has completed its environmental analysis and the DOE reviews it and makes its own environmental determination, DOE would issue a final opinion and order.

Project Orange indicates in its present filing before FE that there is a possibility that Tennessee's pipeline expansion may not be accomplished before the cogeneration plant comes on line, due to the uncertainties of when the FERC's environmental review will be completed and the actual timing of construction. Therefore, it has arranged interruptible transportation on existing Tennessee pipeline facilities for the gas purchased from Noranda. Project Orange requests that Order 274 be amended to authorize the important of volumes from Noranda utilizing Tennessee's existing mainline capacity until the interruptible service can be converted to firm service when the expansion of Tennessee's pipeline facilities takes place.

Under the transportation agreement, Tennessee will deliver 24,000 Dth per day to Project Orange. The only pipeline construction necessary for the interruptible transportation would be the installation of tie-in facilities at the point where Tennessee's No. 200 mainline and the 7-miles, 12-inch delivery pipeline extending from the cogeneration plant intersect.

The ERA preliminarily determined in issuing Order 274 that the import arrangement is competitive and consistent with the DOE natural gas import policy guildelines (49 FR 6684, February 22, 1984), that there is a demonstrated need for the gas, and that proven reserves owned or controlled by Noranda would provide a secure supply over the term of the requested authorization. Although the commodity pricing provisions of the gas sales agreement depart from customary provisions permitting fluctuations in response to market changes, the ERA noted that the agreement results from arm's length negotiations and reflects a balancing of the parties' respective commercial interest. A single up-front payment for gas was negotiated for in order to secure a long-term supply commitment and, also, the importer was given the flexibility to request that Noranda market, either in Canada or in the United States, up to 4.5 million MMBtu each year (or 50 percent of the annual contract quantity) and refund the net proceeds to the importer. In addition, the sales agreement contains an arbitration procedure which either party can initiate.

At the time Order 274 was issued, the lump sum payment was set at $72.9 million. Project Orange filed with its application to amend Order 274 a January 11, 1989, amendment to the gas purchase contract with Noranda which revised the lump sum payment amount to $77.6 million. This payment equates to about $0.65/Mcf if the total contract volume is taken over the 20-year term. In addition to the lump sum payment, a fee will be paid to Noranda to cover gathering and processing costs. The fee initially would be set at $0.30/MMBtu and would be adjusted annually thereafter for inflation.

The present application will be reviewed under section 3 of the NGA, the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127, and the DOE's policy guidelines. Under the guidelines, the competitiveness of an import in the markets served is the primary consideration in determining whether it is in the public interest. Based on the application, the only change in the original proposal conditionally approved by the ERA in Order 274 would be the possible transportation of the gas on an interruptible basis utilizing pipeline facilities currently in place. The contractual terms under which the gas would be supplied are substantially the same and the quantity imported would not change. Absent a protest, it is expected that the ERA's initial evaluation that the import would provide a needed, secure, and competitive supply of gas would remain valid for Project Orange's present application.

All parties should be aware that if approved, the authorization would be temporary and limited to imported gas that is delivered through existing transmission facilities to the cogeneration facility once it is operational. The authority would expire when a final opinion and order is issued in this proceeding after completion of the enviornmental review of Tennessee's proposed pipeline facilities.

NEPA Compliance

Under Section D of the DOE guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, actions that grant or deny import authorizations where no new gas transmission facilities are needed but where new ancillary facilities are to be constructed, such as a cogeneration facility, would normally require the preparation of an environmental assessment (EA), because they involve "minor new construction" (54 FR 12474, March 27, 1989). However, we believe that preparation of an EA to approve or disapprove Project Orange's application to amend Order 247 is unnecessary, and compliance with NEPA for the proposed action can be acheived by invoking two categorical exclusions in the DOE NEPA guidelines (52 FR 47622, December 15, 1987).

The environmental impacts of constructing and operating new cogeneration facilities have been addressed on numerous occasions by the ERA in conjunction with processing

exemption petitions under the Powerplant and Industrial Fuel Use Act (FUA) (10 U.S.C. 3801 *et. seq*, as amended), and as a result, such actions have been granted a categorical exclusion from further NEPA review (52 FR 47670, December 15, 1987). The cogeneration facilities to be constructed in connection with these import applications are identical to those facilities covered by the categorical exclusion for FUA actions. Therefore, it is an appropriate application of another categorical exclusion contained in the DOE guidelines for "actions that are substantially the same as other actions for which the environmental effects have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is currently valid" (52 FR 47668, December 15, 1987) to extend the FUA categorical exclusion for cogeneration facilities to the grant of an authorization to imprt natural gas under the NGA which results in the construction and operation of a cogeneration facility.

A categorical exclusion raises a rebuttable presumption that the Federal action will not significantly affect the quality of the human environment. Unless it appears during the proceedings, on this import application that the grant or denial of interim authorization will significantly affect the quality of the human environment, FE expects that no additional environmental review will be required.

The decision on Project Orange's application for interim authorization would be final with respect to gas transported through pipeline facilities that currently exist. However, no final decision will be issued in this proceeding for imports which are dependent on Tennessee expanding its system capacity until the DOE completes a NEPA review of the environmental effects associated wih constructing and operating the proposed additional facilities.

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. Persons who have already been granted permission to intervene in this docket need not file new motions to intervene, but may submit additional comments or request additional procedures in this case concerning Project Orange's request to amend Order 274. 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., September 8, 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 a 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 proceedings. 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 fact.

If an additional procedure is scheduled, notice will be provided to all parties. 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 Project Orange's application to amend its import authorization 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 hourse of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 26, 1988.

Constance L. Buckley,

Acting Deputy Assistant, Secretary for Fuels Programs, Fossil Energy.

[FR Doc. 89–18629 Filed 8–8–89; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. 89–45–NG]

Transco Energy Marketing Co.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for long-term authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 17, 1989, of an application filed by Transco Energy Marketing Company (TEMCO) for authorization to import on behalf of three local distribution companies (LDC) up to a total of 75,000 Mcf per day of Canadian natural gas for a term commencing on the date the authorization is granted through October 31, 2002. In addition, TEMCO requests blanket authorization to import volumes not purchased by the LDC customers, up to 75,000 Mcf per day during the same term, for short-term sales. The gas would be purchased in Canada by TEMCO from Esso Resources Canada, Ltd., and immediately resold in Canada to Long Island Lighting Company (LILCO), Public Service Electric & Gas Company (PSE&G), and Baltimore Gas & Electric Company (BG&E). TEMCO will arrange for transportation of the gas from the Province of Alberta to the LDCs' pipeline systems in New York, New Jersey, and Maryland over both existing and proposed U.S. transmission facilities. The volumes would enter the U.S. near Niagara Falls, New York.

The application is filed under 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 September 8, 1989.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Office of Fuels Programs, Fossil Energy, U.S.

Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9622;
Diane J. 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: TEMCO, a Delaware corporation with its principal place of business in Houston, Texas, is a gas marketing company and a wholly-owned subsidiary of Transco Energy Services Corporation which, in turn, is a wholly-owned subsidiary of Transco Energy Company. TEMCO is also an affiliate of Transcontinental Gas Pipe Line Corporation (Transco) and sells gas purchased from a variety of sources to customers on and off Transco's system.

On July 8, 1988, TEMCO entered into separately-negotiated sales contracts with BG&E and LILCO, and on July 14, 1989, with PSE&G for the purchase of the imported gas. Under these sales agreements, the price paid to TEMCO would be established monthly and billed on the basis of a demand/commodity pricing structure. TEMCO states that the maximum demand charge for transportation under any agreement would be no greater than 30 percent of the total delivered price. According to the application, the delivered, city-gate price paid by an LDC each month would be determined by TEMCO's weighted average sales price (WASP) of all gas sold by TEMCO in the prior month, plus the costs incurred by TEMCO for transportation of the imported gas from the Alberta wellhead. Further, in calculating the monthly delivered price, the WASP would be reduced by an amount established in each contract to take into account the difference in transportation costs for imported gas received from Alberta and domestically produced gas received from the U.S. Gulf Coast. Adjustments to the WASP under the three contracts are 40 cents for BG&E, 36 cents for LILCO, and 43 cents for PSE&G. TEMCO states that its WASP for June 1989, was $1.624 per MMBtu. Using this WASP, TEMCO states that the delivered cost of gas to the LDCs in July, under the maximum pricing provisions, would be $2.684 (U.S.) per MMBtu for LILCO, $2.644 for BG&E, and $2.614 for PSG&E at 100 percent load factor. These city-gate prices include the 100 percent load factor transportation rate of $.95 for Canadian transportation and $.47 for U.S. transportation. The U.S. transportation rate includes $.122 for Transco's producer settlement payment surcharge. TEMCO states that the pricing formula is subject to renegotiation if TEMCO's WASP is no longer competitive with the delivered cost of U.S. Gulf Coat gas supplies.

Each sales agreement also includes a price cap which TEMCO states is designed to ensure that the imported gas remains competitive with gas prices charged by major U.S. pipelines serving that LDC. The maximum ceiling price contained in any agreement is the 100 percent load factor sales rate for the interstate pipeline(s) serving the LDC, plus 30 cents.

According to TEMCO, no customer is required to purchase gas which exceeds 50 percent of their contract demand during the summer months and 65 percent of their contract entitlement on an annual basis. If an LDCs annual takes of gas fall below its agreed level of purchase, a deficiency charge may be assessed which is no greater than 20 percent of the average commodity sales price in effect during the annual period.

The proposed imports would enter the U.S. near Niagara Falls, New York, and would be transported on the pipeline systems of Tennessee Gas Pipeline Company (Tennessee), National Fuel Gas Supply Corporation (National), and Transco. All three pipelines are proposing to construct new facilities through which TEMCO's imports would be transported. Applications to construct these facilities and provide transportation service to TEMCO are pending before the Federal Energy Regulatory Commission (FERC) in Tennessee Docket No. CP88–171–000, National Docket No. CP88–94–000, and Transco Docket No. CP88–92–000.

The decision on TEMCO'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 and security of the long-term supply. 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 arragement is in the public interest because the volumes are needed by the LDCs, the price of the gas is competitive, and its Canadian supplier is reliable. 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. All parties should also be aware that, in accordance with its present policy and past practice, if FE approves the blanket authorization, it may limit the term to two years.

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 facilities related to this project. The DOE will independently review the results of the FERC environmental evaluation of this project in the course of making its own environmental determination. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

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., September 8, 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 comment 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 will be provided to all parties. 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 TEMCO'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., July 26, 1989.

Constance L. Buckley,

Acting Deputy Assistant Secretary for Fuels Programs, Fossil Energy.

[FR Doc. 89–18630 Filed 8–8–89; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

August 2, 1989.

The following information collection requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3507). For further information contact Jerry Cowden, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0426

Title: BC Docket 81–742—Amendments to pre-hearing designation applications in renewal proceedings

OMB Approval Expiration Date: July 31, 1992.

The text of this information collection requirement may be found in the following document: First Report and Order in BC Docket No. 81–742, Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process (FCC 89–108). The Report and Order was adopted by the Commission on March 30, 1989, and released on May 16, 1989. A synopsis of this Report and Order appears in the **Federal Register** at 54 FR 22595 (May 25, 1989).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–18586 Filed 8–8–89; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20537, 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.: 224–200179–001.

Title: City of Los Angeles Terminal Agreement.

Parties:

City of Los Angeles (CLA)
California Cartage Company, Inc. (CCC)

Synopsis: The Agreement provides for the CLA to assign additional warehouse and open storage area to CCC and change the size of the premises by 40,000 square feet, provided the cumulative change does not exceed 80,000 square feet. It also provides for adjustments to compensation on a pro rata basis.

Agreement No.: 224–004161–004.

Title: San Francisco Port Commission Terminal Agreement.

Parties:

San Francisco Port Commission
Marine Terminals Corporation

Synopsis: The Agreement extends the term of the basic agreement through September 30, 1989. All other provisions of the basic agreement remain the same.

By Order of the Federal Maritime Commission.

Dated: August 4, 1989.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89–18610 Filed 8–8–89; 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.: 02–007680–075.

Title: American West African Freignt Conference.

Parties:

America-Africa Europe Line GMBH
Barber West Africa Line
Farrell Lines, Inc.
Maersk Line
Societe Ivoirienne de Transport Maritime, SITRAM
Torm West Africa Line
Westwind Africa Line

Synopsis: The proposed modification would delete Maersk Line from the Westbound Group of the geographic scope of the Agreement from ports and points in the Canary Islands to ports and points in the U.S.A. and Canada.

Agreement No.: 203–011233–001.

Title: USA-East African Discussion Agreement.

Parties:

Conference Parties
The Bank Line, Ltd.
Lykes Bros. Steamship Co., Inc.

P & O Containers, Ltd.
Independent Carrier Parties
A. P. Moller-Maersk Line
Mediterranean Shipping Company S.A.

Synopsis: The proposed modification would add Compagnie Generale Maritime as an independent carrier to the Agreement.

Agreement No.: 232–011247.

Title: Safbank/Lykes Reciprocal Space Charter and Coordinated Sailing Agreeement.

Parties:

Safbank Line Ltd.
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed Agreement would authorize the parties to agree on sailing schedules, and service frequency in the trade between the United States and South Africa. It would also permit the parties to charter space from one another.

By Order of the Federal Maritime Commission.

Dated: August 4, 1989.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89–18611 Filed 8–8–89; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations; Sunrise International Co. Inc. et al,

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2851
Name: Sunrise International Co., Inc.
Address: 155–06 South Conduit Ave., Jamaica, NY 11434
Date Revoked: July 8, 1989.
Reason: Failed to maintain a valid surety bond

License Number: 2546
Name: Compagnie D'Affretement Et De Transport U.S.A., Inc. dba C.A.T. Inc.
Address: 74 Trinity Place, New York, NY 10006
Date Revoked: July 12, 1989.
Reason: Failed to maintain a valid surety bond

License Number: 1703R
Name: Karevan, Inc.
Address: P.O. Box 11009, Torrance, CA 90510–1009
Date Revoked: July 24, 1989
Reason: Surrendered license voluntarily

License Number: 1068
Name: William A. Marshall Inc.
Address: 2472 East Main Street, Bridgeport, CT 06610
Date Revoked: July 26, 1989
Reason: Failed to maintain a valid surety bond

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 89–18552 Filed 8–8–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

CBS Banc-Corp. 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 August 31, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *CBS Banc-Corp.*, Russellville, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank & Savings Company, Rusellville, Alabama.

2. *Southern Crescent Financial Corp.*, Jonesboro, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Clayton National Bank, Morrow, Georgia, a *de novo* bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Chemical Financial Corporation*, Midland, Michigan; to acquire 25 percent of the voting shares of Community Bancorp, Inc., St. Charles, Michigan, and thereby indirectly acquire Community State Bank of St. Charles, St. Charles, Michigan.

Board of Governors of the Federal Reserve System, August 3, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–18564 Filed 8–8–89; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(f)) 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 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 August 23, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Winston R. Lauder*, Ketchum, Idaho; to acquire between 90 and 100 percent of the voting shares of Idaho State Bank, Glenns Ferry, Idaho.

Board of Governors of the Federal Reserve System, August 3, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–18565 Filed 8–8–89; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bankholding Companies; Correction

This notice corrects a previous Federal Register notice (FR Doc. 89–16287) published at page 29387 of the issue for Wednesday, July 12, 1989.

Under the Federal Reserve Bank of Kansas City, the entry for Jay D. Peters is amended to read as follows:

1. Jay D. Peters and Joan M. Peters, both of Martell, Nebraska; to acquire an additional 95.2 percent of the voting shares of Martell Financial Services, Inc., for a total of 100 percent, and thereby indirectly acquire The Martell State Bank, Martell, Nebraska.

Comments on this application must be received by August 23, 1989.

Board of Governors of the Federal Reserve System, August 3, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18566 Filed 8-8-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Committee on Vital and Health Statistics Subcommittee on Ambulatory Care Statistics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics Subcommittee on Ambulatory Care Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following meeting.

Name: National Committee on Vital and Health Statistics Subcommittee on Ambulatory Care Statistics.

Time and Date: 9:00 am.-5:00 pm—August 24 and 25, 1989.

Place: Hubert H. Humphrey Building, Room 337A-339A, 200 Independence Avenue SW., Washington, DC 20201

Status: Open.

Purpose: The NCVHS Subcommittee on Ambulatory Care Statistics will receive presentations and hold discussions concerning the statistical aspects of physicians payment systems.

Contact Person For More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: August 4, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-18679 Filed 8-8-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 86N-0141; DESI 12708]

Diutensen Tablets; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of new drug application (NDA) for Diutensen Tablets because the drug lacks substantial evidence of effectiveness. The product has been used in basic hypertensive therapy and for essential hypertension of all grades of severity.

EFFECTIVE DATE: September 8, 1989.

ADDRESSES: Requests for an opinion of the applicability of this notice to a specific product should be identified with DESI number 12708 and directed to the Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Margaret F. Sharkey, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 5, 1986 (51 FR 20552), the Commissioner of Food and Drug granted an evidentiary hearing before an administrative law judge on the proposal to withdraw approval of the new drug application for the following product containing 2.0 milligrams (mg) cryptenamine as the tannate salt and 2.5 mg methyclothiazide: Diutensen Tablets (NDA 12-708, held by Wallace Laboratories, Division of Carter-Wallace, Inc., Half Acre Rd., Cranberry, NJ 08512).

Subsequently, in accordance with an agreement to resolve the issue of the drug's effectiveness by other means, Carter-Wallace withdrew its hearing request. Pursuant to that agreement, FDA had concluded that the drug has not been shown to be effective and is now withdrawing approval of the new drug application.

Any drug product that is identical, related, or similar to this product and is not the subject of an approved new drug application is covered by NDA 12-708 and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance at the address given above.

The Director of the Center for Drug Evaluation and Research, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under the authority delegated to him (21 CFR 5.82) finds that, on the basis of new information before him with resepct to the product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 12-708 and all the amendments and supplements thereto is withdrawn effective September 8, 1989. Shipment in interstate commerce of the product above or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: July 31, 1989.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 89-18592 Filed 8-8-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement and Proposed Funding Preferences for Grants for Residency Training and Advanced Education in the General Practice of Dentistry

The Health Resources and Services Administration announces that applications for Fiscal Year 1990, Grants for Residency Training and Advanced Education in the General Practice of Dentistry are being accepted under the authority of section 785 of the Public Health Service Act extended by the Health Professions Reauthorization Act of 1988, Title VI, Pub. L. 100-607 and invites comments on the proposed funding preferences stated below.

Section 785 of the PHS Act (formerly section 786(b)) authorizes the Secretary to make grants to any public or nonprofit private school of dentistry or accredited postgraduate dental training institution (e.g., hospitals and medical centers) to plan, develop, and operate an approved residency or an approved advanced educational program in the general practice of dentistry and to provide financial assistance to participants in such a program who are

in need of financial assistance and who plan to specialize in the practice of general dentistry.

The Administration's budget request for Fiscal Year 1990 does not inlcude funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in timely fashion consistent with the needs of the programs as well as provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

To receive support, programs must meet the requirements of final regulations at 42 CFR Part 57, Subpart L.

Review Criteria

The review of applications will take into consideration the following criteria:

(a) The potential effectiveness of the proposed project in carrying out the training purposes of section 785 of the Act;

(b) The degree to which the proposed project adequately provides for meeting the project requirements;

(c) The administrative and managerial capability of the applicant to carry out the proposed project in a cost-effective manner;

(d) The qualifications of proposed staff and faculty;

(e) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(f) The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

The following funding preferences are proposed for Fiscal Year 1990. These preferences had been established in the Federal Register of April 17, 1986, (51 FR 13099).

New programs (Category 1), followed by expanding programs (Category 2), and then program improvements (Category 3), and within Category 1, first funding will be for approved applications designed to establish programs in States in which no nonfederal supported residency or advanced educational programs in general dentistry are currently in operation.

Category 1 of these preferences addressed new programs. The Department is proposing to expand this preference to include applicants which have been operating an advanced general dentistry program for three years or less, which are proposing to increase the number of trainees in the program, and which have not received grant funds under this authority. This revision is to provide institutions which begin an advanced dentistry program, on their own initiative, without Federal funds, with the same opportunity to obtain funding as those institutions which wait for the availability of Federal grant funds before beginning an advanced dentistry program.

No funding preference between residency training programs and advanced educational programs in general dentistry is being proposed.

In accordance with section 785 of the Act, three distinct categories of program development can be supported. Applications must address at least one of these categories.

Category 1: Program Initiation

An applicant may request for up to one year of program planning and development, followed by two years of program operation. For this purpose an applicant must show, at a minimum, preliminary provisional approval from the Commission on Dental Accreditation before the initial grant award date (grants will be effective July 1 of the current fiscal year). Before a second year grant award will be made, the grantee must show an accreditation classification of accreditation eligible.

An applicant who has been operating an accredited program for three years or less who proposes to increase the number of first year trainees in the program, which has not received grant funding under this authority will be considered a Category 1 applicant.

Category 2: Program Expansion

An applicant may request support for an existing program which has full approval accreditation classification to fund the cost of a first-year enrollment increase in the program.

Category 3: Program Improvement

An applicant may request support for an existing program which has conditional approval or provisional approval accreditation to correct deficiencies or weaknesses in order to gain full approval accreditation status. Support is also available for an existing program which has full approval accreditation for changes or additions in faculty, curriculum and/or facilities to enhance the quality of the program.

Interested persons are invited to comment on the proposed funding preferences. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1990 award cycle, this comment period has been reduced to 30 days. All comments received on or before September 8, 1989 will be considered before the final funding preferences are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding preferences will be applied.

Written comments should be addressed to: Acting Director, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–15, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated and Dental Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

The following funding priorities were implemented for the Fiscal Year 1989 grant cycle and the Administration is extending these priorities in Fiscal Year 1990:

(1) Projects which satisfactorily document enrollment of underrepresented minorities in proportion to or greater than their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native or Pacific Islanders) over average enrollment of the past three years in the project's postgraduate year (PGY) trainees.

(2) Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or PHS 781 funded Area Health Education Center or State designated clinic/center serving an underserved population.

(3) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient

case management of HIV/AIDS infection-related diseases.

(4) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of dental services and utilization of peer-developed guidelines and standards.

(5) Applications proposing to provide substantial *multidisciplinary* geriatric training experiences in multiple ambulatory settings and inpatient and extended care facilities.

The Administration does not intend to apply any special considerations in the review of applications for Fiscal Year 1990.

Grant application materials are being mailed only in response to requests received. Such requests and questions regarding grants policy should be directed to: Grants Management Officer (D–30), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be sent to the Grants Management Officer at the above address.

To obtain specific information concerning programmatic aspects of the grant program, contact: Dental Health Branch, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–15, Rockville, Maryland 20857, Telephone: (301) 443–6837.

Pub. L. 100–607, section 633(a), requires that for grants issued under sections 780, 784, 785, and 786 for Fiscal Year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately six months from the first deadline.

The application deadline date is September 8, 1989. Applications will be considered as meeting the deadline if they are either:

(1) *Received on* or before the deadline date, or

(2) *Postmarked on* or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be acceptable as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

This program is listed at 13.897 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: August 3, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–18593 Filed 8–8–89; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management (BLM)

[AZ 020–41–5410–10–ZAFH; AZA–23386]

Receipt of Conveyance of Mineral Interest Application

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Food City Inc. and Noah and Marie Billings have applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 9 N., R. 2 E.,
Sec. 13, E½NE¼, SW¼NE¼, SE¼NW¼, S½.
T. 9 N., R. 3 E.,
Sec. 29, all;
Sec. 30, Lots 1, 2, 3, E½, E½NW¼, NE¼ SE¼.

Containing 1,678.52 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminte either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, February 9, 1989, whichever occurs first.

Charles R. Frost,

Associate District Manager.

Dated: July 26, 1989.

[FR Doc. 89–18574 Filed 8–8–89; 8:45 am]

BILLING CODE 4310–32–M

[AK–932–09–4214–10; A–031764]

Conformance to Survey; Transfer of Jurisdiction; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice provides official publication of the surveyed description and of the transfer of administrative jurisdiction from the Department of the Navy to the U.S. Coast Guard, of certain lands on Kodiak Island, Alaska, within Public Land Order No. 1949.

Conformance to Survey

1. Plats of survey for the following land were officially filed in the Alaska State Office, Bureau of Land Management, Anchorage, Alaska, on January 9, 1980.

Seward Meridian

T. 27 S., R. 20 W., Tract A;
T. 27 S., R. 21 W., Tract A;
T. 28 S., R. 21 W., Tract A.

The area described containing 6,254.57 acres represents the land that was previously described as follows:

Kodiak Island

Beginning at Corner No. 2 of U.S. Survey No. 2539, U.S. Naval Reserve at Kodiak, thence;
East, 11,832.42 feet along boundary of U.S. Survey No. 2539,
N. 34°41′ W., 7,907.16 feet;
S. 85°45′15″ W., 4,157.22 feet;
N. 89°25′45″ W., 5,957.22 feet;
S. 52°28′30″ W., 10,567.29 feet;
S. 13°10′30″ W., 9,085.74 feet;
S. 6°34′ E., 4,371.48 feet;
S. 87°18′35″ E., 12,715.45 feet to a point on the west boundary of U.S. Survey No. 2539;
North 13,973.68 feet along west boundary to the point of beginning.

The area described contains approximately 6,269.70 acres.

2. A plat of survey for the following land was officially filed in the Alaska State Office, Bureau of Land Management, Anchorage, Alaska, on January 10, 1980.

Seward Meridian

T. 29 S., R. 20 W.,
Sec. 10, lot 1;
Sec. 15, lot 1.

The area described containing 12.56 acres represents the land that was previously described as follows:

Middle Bay

The portion of the northwest shore of Middle Bay lying east of the east boundary of U.S. Survey No. 2539, U.S. Naval Reserve.

The area described contains 49.28 acreas.

Transfer of Jurisdiction

Subject to valid existing rights, the administrative jurisdiction of the lands withdrawn by Public Land Order No. 1949, as amended, dated August 19, 1959, was transferred on May 21, 1975, from the Department of the Navy to the U.S. Coast Guard pursuant to 10 U.S.C. 2571(a)(1970).

Terms and conditions of Public Land Order No. 1949, as amended, remain the same and the surveyed lands described above remain withdrawn from all forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws, but excepting disposals of materials under the Act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601–604 (1982)), as amended.

ADDRESS: Inquiries about this land should be sent to the Alaska State Office, Bureau of Land Management, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 907–271–3342.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 89–18623 Filed 8–8–89; 8:45 am]

BILLING CODE 4310–JA–M

[ID–943–09–4214–11; I–011823, I–09526]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that 462.36 acres of land withdrawn for nine recreation and historical sites, continue for an additional 20 years. The lands have substantial recreation facilities constructed on them. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing under the proposal.

EFFECTIVE DATE: Comments should be received within 90 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1735. The U.S. Forest Service proposes that the existing land withdrawals made by Public Land Order Nos. 5290 and 2623, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as they affect the following described land:

Boise Meridian

(I–09526, Nezperce NF)

Robbins Creek Recreation Area

T. 24 N., R. 3 E.,
Sec. 13, lot 1.

Pilot Rock Recreation Area

T. 24 N., R. 4 E.,
Sec. 7, S½S½SW¼SE¼ and S½S½SE¼SE¼;
Sec. 18, lots 1 and 3.

Kelley Creek Recreation Area

T. 24 N., R. 3 E.,
Sec. 18, lot 1.

Van Creek Recreation Area

T. 24 N., R. 3 E.,
Sec. 7, S½S½SE¼SW¼;
Sec. 18, lot 2.

Spring Bar Creek Recreation Area

T. 24 N., R. 2 E.,
Sec. 12, SE¼SW¼SE¼;
Sec. 13, lot 2.

Allison Creek Recreation Area

T. 24 N., R. 2 E.,
Sec. 13, lot 6.
(I–011823, Nezperce NF)

Florence Cemetery Historical Site

T. 25 N., R. 3 E.
Sec. 13, SE¼SW¼NW¼NE¼, SW¼SE¼NW¼NE¼, NW¼NE¼SW¼NE¼ and NE¼NW¼SW¼NE¼.

Wind River Recreation Area

T. 24 N., R. 4 E.,
Sec. 3, lot 1.

Red River Recreation Area

A strip of land eight chains wide being five chains on the northerly side and three chains on the southerly side of the Red River beginning at the point where Red River is closest to the center of unsurveyed section 34, T. 28 N., R. 9 E., and extending appropriately 4.5 miles upstream to the point where Red River crosses the section line between unsurveyed section 24, T. 28 N., R. 9 E. and unsurveyed section 19, T. 28 N., R. 10 E., and located wholly within the following subdivisions:

T. 28 N. R. 9 E., unsurveyed
Sec. 23, E½SE¼;
Sec. 24, S½N½ and W½SW¼;
Sec. 26, NE¼, S½NW¼, E½SW¼ and NW¼SE¼;
Sec. 27, SE¼;
Sec. 34, NE¼.

The areas described aggregate 462.36 acres in Idaho and Shoshone Counties.

The withdrawals are essential for protection of the historical values and capital improvement constructed on the sites. The withdrawals closed the lands to surface entry and mining, but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: July 31, 1989.

William E. Ireland,

Chief Reality Operations Section.

[FR Doc. 89–18575 Filed 8–8–89; 8:45 am]

BILLING CODE 4310–99–M

Minerals Management Service

Receipt of Outer Continent Shelf Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Total Minatome Corporation has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 2082 and 1152, Blocks 268 and 255, respectively, 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 Berwick, Louisiana.

DATE: The subject DOCD was deemed submitted on August 1, 1989. Comments must be received within 15 days of the publication date of this Notice 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 Resources 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 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 of 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: August 1, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–18624 Filed 8–8–89; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Institution of Formal Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has instituted a formal enforcement proceeding relating to the cease and desist and exclusion orders issued on March 16, 1989, at the conclusion of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1102.

SUPPLEMENTARY INFORMATION: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 211.56(c) of the Commission's Interim Rules of Practice and Procedure, 53 FR 33076 (Aug. 29, 1988), to be codified at 19 CFR 211.56(c).

On March 16, 1989, the Commission issued its final determination in the investigation. The Commission determined that there was a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) in the unlicensed importation and sale of certain erasable programmable read only memories (EPROMs) by, *inter alia*, respondent Atmel Corp. (Atmel). The Commission determined that a limited exclusion order and six cease and desist orders were the appropriate remedy. One of the cease and desist orders was issued to Atmel. The Commission's determination and orders became final on May 22, 1989, the President having determined to take no action with respect to the Commission's determination and orders.

On July 11, 1989, complainant Intel Corp. (Intel) filed a request for a formal enforcement proceeding against Atmel and Jack Peckham, Atmel's Vice President of Sales.

The Commission having examined the request for a formal enforcement proceeding filed by Intel, and having found that the request complies with the requirements for institution of a formal enforcement proceeding, determined to institute a formal enforcement proceeding.

Copies of the Commission's Order and all other nonconfidential documents filed in connection with this formal enforcement proceeding are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC, 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

Issued: August 2, 1989.
By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–18547 Filed 8–8–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–299]

Certain Food Treatment Ovens, Components Thereof and Processes Carried out Therein; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Koppens Machinefabriek B.V. and Koppens Industries, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. S1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on August 3, 1989.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be

obtained by contacting the Commission's TDD terminal on 202–252–1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–252–1805.

Issued: August 2, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–18548 Filed 8–8–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–436 and 437 (Preliminary)]

Generic Cephalexin Capsules From Israel and Portugal

AGENCY: United States International Trade Commission.

ACTION: Notice of withdrawal of petition and termination of antidumping investigations.

SUMMARY: On August 1, 1989, the U.S. Department of Commerce and the U.S. International Trade Commission received a letter from petitioner in the subject investigations (Biocraft Laboratories, Inc., Elmwood Park, NJ) withdrawing its petition. Commerce has not initiated an investigation as provided in section 732(c) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)). Accordingly, the Commission gives notice that its antidumping investigations concerning generic cephalexin capsules from Israel and Portugal (investigations Nos. 731–TA–436 and 437 (Preliminary)) are terminated.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–252–1184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

Authority: These investigations are being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.40 of the Commission's rules (19 CFR 207.40)

Issued: August 2, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–18549 Filed 8–8–89; 8:45 am]

BILLING CODE 7020–02–M

[Inv. No. 337–TA–298]

Low Friction Drawer Supports, Components Thereof, and Products Containing Same; Commission Decision Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation To Add an Allegation of Infringement of Claims 11 and 15 of U.S. Letters Patent 4,125,297

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided not to review an initial determination (ID) (Order No. 1) issued by the presiding administrative law judge (ALJ) granting the motion of complainant GWN, Inc., d/b/a Delta Industries ("Delta") for leave to amend its complaint and the notice of investigation to add an allegation of infringement of claims 11 and 15 of an additional patent, U.S. Letters Patent 4,125,297.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Calvin Cobb, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1103.

Hearing impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–252–1810.

SUPPLEMENTARY INFORMATION: Delta filed a complaint with the Commission on April 26, 1989. The complaint, as supplemented, alleged that GM Industries, Inc. is violating section 337(a)(1)(B)(i) by reason of unauthorized importation and sale of products infringing claims 1 through 6, 9, and 11 through 15 of U.S. Letters Patent 4,236,773. The Commission instituted an investigation of Delta's complaint and published its notice of investigation in the **Federal Register** 54 FR 23294 (May 31, 1989).

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (53 FR 33070, Aug. 29, 1988).

Issued: August 2, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–18550 Filed 8–8–89; 8:45 am]

BILLING CODE 7020–02–M

[332–278]

United States-Canada Free-Trade Agreement: Probable Economic Effect on U.S. Industries and Consumers of Accelerated Elimination of U.S. Tariffs on Certain Articles From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on July 17, 1989, of a request from the U.S. Trade Representative (USTR) pursuant to authority delegated by the President, the Commission instituted investigation No. 332–278 under section 332(g) of the Tariff Act of 1930, (19 U.S.C. 1332(g)) to advise the President, with respect to each article contained in Annex I of the USTR's **Federal Register** notice of July 17, 1989 (54 FR 29959), of its judgment as to the probable economic effect of the immediate elimination of the U.S. tariff, under the United States-Canada Free-Trade Agreement, on domestic industries in the United States producing like or directly competitive products, and on consumers.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: The Project Leader, Carl F. Seastrum (202–252–1493), General Manufactures Division, Office of Industries, U.S.

International Trade Commission, 500 E Street SW., Washington, DC 20436. For information on legal aspects of the investigation contact William Gearhart of the Commission's Office of the General Counsel (202–252–1091). The Media should contact Jim Craig, Director, Office of Public Affairs (202–252–1822). For information on a product basis, contact the appropriate member of the Commission's Office of Industries, as follows:

(1) Agricultural products, Mr. Fred Warren (202–252–1311)
(2) Textiles and apparel, Ms. Mary Elizabeth Enfield (202–252–1455)
(3) Chemical products, Mr. Larry Johnson (202–252–1351)
(4) Minerals and metals, Mr. Vincent DeSapio (202–252–1435)
(5) Machinery and equipment, Mr. David Slingerland (202–252–1400)
(6) General manufactures, Ms. Kathryn Bishop (202–252–1494)

Hearing-impaired persons can obtain information on this study by contacting our TDD terminal on (202–252–1810).

SUPPLEMENTARY INFORMATION:

Background

The United States-Canada Free-Trade Agreement (FTA), which entered into force on January 1, 1989, provides that all products of Canada imported into the United States and all products of the United States imported into Canada shall be free of duty by January 1, 1998. In the United States, it was approved and implemented by the United States-Canada Free-Trade Agreement Implementation Act of 1988.

Annex 401.2 of the FTA established three principal timetables for the staged elimination of tariffs on all dutiable products in the United States and Canadian tariff schedules. These timetables are: (1) Immediate elimination of tariffs upon implementation of the FTA; (2) elimination in five equal annual cuts of 20 percent per year resulting in duty-free treatment by January 1, 1993; and (3) elimination in ten equal annual cuts of 10 percent per year resulting in duty-free treatment by January 1, 1998.

Article 401(5) of the FTA provides that at the request of either government, the two governments are to undertake consultation to consider agreeing to accelerate the elimination of the duties on specific products in the schedule of each government. Section 201(b) of the FTA Implementation Act grants the President, subject to certain consultation and layover requirements, the authority to proclaim any such agreed acceleration of the elimination of a U.S. duty. The FTA Implementation Act also provides that the Administration will consider requests from interested private sector groups as a matter of priority in implementing the authority of section 201(b).

The USTR requested that the Commission provide the probable economic effect advice, required by section 103(a)(1)(B) of the FTA Implementation Act, preparatory to entering into consultations with the Government of Canada, on the U.S. rates of duty to be applied on the articles listed in 54 FR 29959, when imported from Canada on and after January 1, 1990.

In addition to the advice requested with respect to the articles identified in Annex I of 54 FR 29959, the USTR in her letter of July 17, 1989, indicated that a number of the petitions received by the Governments of the United States and Canada have requested acceleration only for selected products within a tariff subheading. USTR will provide the Commission with a list of such products and the 8-digit tariff subheadings under which they are classified. The Commission's advice, in addition to covering all products within each subheading on the list, will also address, to the extent possible, the effect of acceleration of tariff elimination on the narrower product coverage specified in such petitions as well. When received, this list will be available for public inspection in the Office of the Secretary to the Commission.

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. On September 11, 1989, and continuing, as required, on September 12 through 15. All persons will have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear not later than August 30, 1989. Prehearing briefs (original and 14 copies) should also be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, not later than 5:00 p.m., August 30, 1989. Any post-hearing briefs must be filed by September 20, 1989.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on September 6, 1989. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Issued: August 1, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–18551 Filed 8–8–89; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. International Paper Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 1, 1989, a proposed Consent Decree in *United States* v. *International Paper Co.*, No. 89–0172–B, was lodged with the United States District Court for the District of Maine. The proposed Consent Decree arises from a civil action filed simultaneously alleging violations of the New Source Performance Standards of Section 111 of the Clean Air Act, 42 U.S.C. 7411, at the company's pulp and paper mill in Jay, Maine. The proposed Decree requires the company to modify its waste fuel boiler so as to render it incapable of firing fossil fuel in excess of 250 million BTU/hr, to install a wet scrubber air pollution control device on the boiler to reduce its emissions, and to pay civil penalties to the federal government and the State of Maine totalling $990,000.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *International Paper Co.*, DJ Ref No. 90–5–2–1–1172.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Maine, Room 321, Federal Building, 202 Harlow Street,

Bangor, Maine, and at the Region I Office of the Environmental Protection Agency, 22nd Floor, JFK Federal Building, Boston, Massachusetts. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $3.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-18577 Filed 8-8-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 24, 1989 a proposed Consent Decree in *United States of America v. Navistar International Transportation Corp.* Civil Action No. IP89-418-C (S.D. Inc.), between the United States, on behalf of the United States Environmental Protection Agency ("U.S. EPA"), and Navistar International Transportation Corporation has been lodged with the United States District Court for the Southern District of Indiana. The Consent Decree required Navistar to complete construction of air pollution control equipment and implement a maintenance and testing program that will assure compliance with the Indiana SIP. The Consent Decree requires Navistar to pay a civil penalty of $33,750.

The Department of Justice will receive comments relating to the Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America v. Navistar International Transportation Corp.*, D.J. Ref. No. 90-5-2-1—1227. The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Indiana, U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204, at the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1748, Tenth and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-18412 Filed 8-8-89; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATE: Requests for copies must be received in writing on or before September 25, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Defense, Office of the Secretary of Defense (N1-330-89-1). DOD Dependent School Special Education Files.

2. Joint Chiefs of Staff, Joint Staff Secretariat (N1-218-89-1). Facilitative records relating to manpower and personnel management, information security war gaming, communications and general administration.

3. Department of Justice, Justice Management Division (N1-60-88-10 thru -13). Case files created or accumulated by the various legal divisions and the Office of Legal Counsel in carrying out the Department's responsibilities in matters arising under the laws of the United States in which legal action may be taken or considered.

4. Department of Justice, Justice Management Division (N1-60-89-5).

Electronic tracking records for debt collection management.

5. National Archives and Records Administration, Office of Records Administration, Records Appraisal and Disposition Division (N1–GRS–89–4). Agency Privacy Act implementation reports and reports of new systems submitted to the Office of Management and Budget.

6. National Science Foundation (N1–307–88–2). Records pertaining to review and administration of research grant and contract proposals accounts.

7. Department of State, Under Secretary for Management, Office of Medical Services (N1–59–89–37). Routine and facilitative medical services records.

8. Department of State, All Foreign Service Posts (N1–84–89–5). Comprehensive schedule covering health and medical records.

9. Department of the Treasury, Internal Revenue Service (N1–58–89–4). Comprehensive records schedule for the Research Division.

Dated: August 2, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89–18578 Filed 8–8–89; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (US/Japan Fellowships Section) to the National Council on the Arts will be held on August 23, 1989, from 9:00 a.m.–5:00 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–18543 Filed 8–8–89; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 17, 1989 through July 28, 1989 (54 FR 31097). The last biweekly notice was published on July 26, 1989.

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 September 8, 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 No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: June 16, 1988 as supplemented on April 27, 1989

Description of amendment request: The proposed amendment would revise the Technical Specification surveillance test frequency requirements for the radiation monitoring system.

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.

Arkansas Power and Light Company (AP&L) has reviewed the proposed change and has determined that: (1) The proposed change would not increase the probability or consequences of any accident previously evaluated since it does not affect previously analyzed accidents associated with plant operations and does not affect any information required to safely shut down the plant; (2) the proposed change would not create the possibility of a new or different kind of accident from any previously analyzed since the change does not allow the instrumentation to be operated in any new or different way from what is currently allowed; and (3) the proposed change would not involve a significant reduction in the margin of safety since it does not impact plant operation or involve any plant modifications. Therefore, AP&L has determined that the requested changes do not involve a significant hazards consideration.

The proposed amendment would change Technical Specification Table 4.1-1 regarding Item 28, "Radiation Monitoring System other than containment high range monitors." The "Channel Description" would be changed to identify two subparts of the Radiation Monitoring System: Process Monitoring System and Area Monitoring System. Each subpart would have separate surveillance test frequencies specified. The channel check frequency for both subparts would be increased to once per shift from once per week. The channel functional test frequency for the Process Monitoring System would be decreased from monthly to quarterly, and would remain monthly for the Area Monitoring System. Finally the channel calibration frequency for both subparts would be decreased to once per 18 months from once per quarter.

These proposed surveillance frequencies are consistent with the Radiological Effluent Monitoring Instrumentation Technical Specifications, which require a quarterly channel functional test and a channel calibration every 18 months. They are also identical to the Radiation Monitoring System surveillance frequencies specified in the Arkansas Nuclear One, Unit 2, Technical Specifications, which are consistent with the Combustion Engineering Standardized Format Technical Specifications and the channel calibration frequency (during refueling outages) indicated in Section 12.3 of the Standard Review Plan. Additionally, the decrease in the channel calibration frequency to once every 18 months is justified by a significant record of reliable instrument performance.

Based on the above, the staff concludes that these proposed changes do 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. Therefore the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

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: Frederick J. Hebdon

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: March 29, 1989

Description of amendment request: The amendments will implement expanded operating domains for both Brunswick units. The expansion of the operating domain allows the fuel cycle economics to be enhanced through implementation of flow control spectral shift operation and increased core flow coast down capability.

The amendment for each unit is divided into three categories of changes. Category one changes are as follows:

Delete the flow-biased APRM scram and rod block trip setpoint setdown requirements, delete reference to the k_f flow adjustment factor, introduce power and flow dependent adjustments to the average planar linear heat generation rate (APLHGR) and minimum critical power ratio (MCPR) limits, and delete the definitions of the fraction of rated thermal power (FRTP) and the core maximum average planar linear heat generation rate ratio (CMAPRAT).

Category two changes modify the flow-biased average power range monitors (APRM) scram and rod block trip equations to accommodate an expanded operating domain. Category three changes modify the rod block monitor (RBM) trip setpoints and RBM system operability requirements.

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 licensee provided the following analysis for Category 1 changes to support a no significant hazards consideration determination.

1. Changes in the operating limit values will maintain existing margins between the operating limit and the safety limit. Operation within the operating limit will ensure that the consequences of any accident which could occur would be within acceptable limits. There will be no impact on the probability of any accident previously evaluated. The proposed change identifies that adjustments to the MCPR and APLHGR limits as specified in the Core Operating Limits Report will be made as functions of core flow and power. These adjustments as specified in the Core Operating Limits Report are determined using NRC approved methods as required by Technical Specification 6.9.3.2. The adjustments impose restrictive conditions on plant operation such that the consequences of anticipated operational occurrences are no more severe than the most limiting condition with the current Technical Specifications with flow-biased APRM scram and rod block setpoint setdown provisions. Thus, there is no significant change in the consequences of any accident previously evaluated.

2. The proposed change eliminates the requirement for setdown of the flow-biased APRM scram and rod block trip setpoints under specified conditions and substitutes adjustments to the MCPR and APLHGR operating limits. The MCPR and APLHGR operating limits are defined such that no postulated transient event, if initiated from other than rated power or flow conditions, could result in violation of either the safety limit MCPR or the fuel thermal-mechanical design bases. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The flow and power adjustment factors were determined using NRC approved methods and satisfy the same NRC approved criteria met by analyses assuming setdown of the flow-biased APRM scram and rod block setpoints. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The licensee provided the following analysis for Category 2 changes to support a no significant hazards consideration determination:

1. The proposed change expands the power and flow operating domain by relaxing the restrictions imposed by the formulation of the flow-biased APRM rod block and scram trip setpoints. The probability of any accident is not significantly increased by operating at a higher power at a lower core flow because the formulation of the flow-biased APRM rod block trip equation has been notified to provide the same protection as currently exists. The consequences of anticipated operational occurrences have been evaluated using NRC approved methods and the proposed setpoint formulations have been selected so as not to involve a significant increase in the consequences of any accident.

2. Changing the formulation for the flow-biased APRM rod block and scram trip setpoints does not change their respective functions. The APRM rod block trip setpoint will continue to block control rod withdrawal when core power significantly exceeds design bases and approaches the scram level. The APRM scram trip setpoint will continue to initiate a scram if the power/flow condition exceeds that specified by the APRM rod block setpoint. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. As stated above, the flow-biased APRM rod block and scram trip setpoints will continue to perform their respective functions. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The licensee provided the following analysis for Category 3 changes to support a no significant hazards consideration determination.

1. The RBM system is not involved in the initiation of any accident and does not increase the probability of the occurrence of any accident. The RBM system only serves to mitigate the consequences of one event; the rod withdrawal error (RWE) anticipated operational occurrence. Analyses of the RWE were performed using NRC approved methods for the modified setpoints. The results demonstrate that the consequences of the RWE event are no more severe with the modified RBM system than with the current configuration. Therefore, the proposed change does not involve a significant

increase in the consequences of any accident previously evaluated.

2. The proposed change does not alter the function of any component or system other than the RBM system. The changes to the RBM system have been designed to enhance the reliability and accuracy of the RBM system without impacting the degree of isolation of the RBM system from other plant systems. The function of the RBM system does not change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change revises the setpoints for the RBM system which is solely designed to mitigate the consequences of the RWE anticipated operational occurrence. Analyses of the RWE event are used to derive the setpoints such that the safety limit for the minimum critical power ratio (MCPR) will not be challenged assuming the initial MCPR was no less than the operating limit MCPR. These setpoints are therefore dependent upon the operating limit MCPR. For this reason, the proposed change also identifies that these setpoints are specified in the Core Operating Limits Report. The Core Operating Limits Report is prepared based on the results of NRC approved methods as required by Technical Specification 6.9.3.2. The setpoints reported in the Core Operating Limits Report are derived such that the RWE event is not the most limiting event in determining the operating limit MCPR. The operating limit MCPR maintains the margin of safety for this thermal limit. Thus, the proposed change does not involve a significant 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. In addition, the staff has reviewed NEDC-31654P, "Maximum Extended Operating Domain Analysis for Brunswick Steam Electric Plant," which was enclosed as part of the licensee's March 29, 1989 submittal. The staff has verified that the transients which have been considered potentially limiting in the Brunswick Updated Final Safety Analysis Report, Chapter 15, have been reanalyzed using the proposed maximum extended operating domain conditions. The purpose of the transient reanalysis, using an NRC-approved methodology, is to ensure that the limits of the safety analysis are maintained. The results of the analysis, as documented in NEDC-36154P, show that the safety limit MCPR has not been exceeded. Based on this finding, the staff agrees with the licensee that for Category one changes, the proposed requested amendment will not increase the consequences of an accident previously evaluated. Furthermore, the staff finds that the operation in the maximum extended operating domains for both Brunswick Units has no effect on the probability of occurrence of any transients because plant equipment and systems still operate within their design limits. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: May 25, 1989

Description of amendments request: Commonwealth Edison Company (CECo) has proposed amending Sections 3.5.C & E (including applicable Bases) of the Technical Specifications (TS) in Appendix A of the Quad Cities Operating Licenses, DPR-29 and DPR-30. These amendments would revise certain Limiting Conditions of Operability (LCO) and Surveillance requirements associated with the High Pressure Core Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) systems. The general purpose of CECo's proposed TS revision is to conform Quad Cities' LCO and surveillance requirements with those of the Standard TS for General Electric Boiling Water Reactors, NUREG-0123, Revision 3. Specific TS changes proposed by CECo as part of their amendment application are as follows:

(1) Expand HPCI/RCIC LCO applicability to include whenever fuel is in the reactor vessel; increase the required Reactor Pressure for HPCI operability from 90 psig to 150 psig; and delete requirement for HPCI & RCIC operability prior to reactor startup from cold shutdown.

(2) Extend allowed out-of-service time (i.e. inoperability) for HPCI & RCIC during reactor operation to 14 days (versus 7-days).

(3) Establish time limits for continued reactor startup following an outage, in which work was performed that directly affected HPCI & RCIC operability, until HPCI & RCIC are proven operable.

(4) Delete the surveillance requirement for immediately demonstrating operability of other Emergency Core Cooling System (ECCS) subsystems whenever HPCI or RCIC are inoperable - require instead a verification of ECCS subsystems operability rather than demonstration.

(5) Expand surveillance requirements of HPCI & RCIC to test pump flow rates at low and rated reactor pressures. Replace the monthly valve operability check with a monthly valve lineup check, and delete the monthly pump operability check.

(6) Change required reactor pressure to be reduced to during orderly shutdown due to HPCI or RCIC inoperability from 90 psig to 150 psig.

(7) Revise applicable BASES as appropriate.

(8) Delete the obsolete RCIC LCO that was only applicable from November 6 through November 20, 1976. All of the aforementioned TS changes are consistent with Standard TS language, industry operating practices, and existing QCNPS design considerations.

(9) Expand HPCI/RCIC LCO applicability to whenever fuel is in the reactor vessel.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) involve a significant reduction in a margin of safety.

Commonwealth has evaluated this proposed amendment and determined that it involves no significant hazards consideration. In accordance with the criteria of 10 CFR 50.92(c):

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment requires HPCI to be operable at greater than 150 psig which is in conformance to design requirements and allows approximately a 175 psi overlap with the low pressure core cooling subsystems injection capabilities at approximately 325 psig. The deletion of the requirement for HPCI and RCI to be operable prior to reactor startup from a cold shutdown provides clarification of intent until the

reactor is producing steam at a pressure sufficient to provide water injection to the reactor. This clarification of intent does not reduce the availability of either the HPCI or the RCIC systems when needed to perform their design function. The proposed change for reduction of reactor pressure from 90 to 150 psig for RCIC inoperability requirement is made to provide consistency with the reactor pressure of 150 psig presently allowed in the RCIC operability requirements. The change for both HPCI and RCIC in the allowed out-of-service time from 7 to 14 days, reflects an adoption of later BWR operating plant requirements at Quad Cities for these systems. The 14 day out-of-service period reflects the low probability of the need for the systems and also reflects the availability of high and low pressure core cooling systems for post accident mitigation functions. The deletion of the term irradiated from the system operability requirements is conservative and does not reduce system availability.

Proposed changes in testing requirements for HPCI and RCIC include deletion of the testing of other core cooling systems when HPCI or RCIC is inoperable. The present testing methods represent requirements beyond those necessary to adequately assure that remaining core cooling systems are operable and capable of performing their design intent. The proposed deletion of this multiple system testing requirement will bring Quad Cities Units 1 and 2 in line with current BWR plant testing requirements.

The remaining changes to HPCI and RCIC requirements involve inclusion of Inservice Testing Program requirements where applicable and Standard Plant testing guidelines. These changes include deletion of monthly pump and valve operability tests but also include addition of monthly valve lineup checks and a new pump flow test to be conducted under certain startup conditions. The changes to the testing requirements will enhance determination of system operability by providing both a low and high pressure demonstration of pump performance. The quarterly pump performance tests have been demonstrated at later plants to provide assurance of system operability and thus the present monthly pump operability test can be deleted. The proposed monthly valve lineup checks have also been shown through use at other facilities to provide assurance of system alignment and thus the monthly valve operability checks can be deleted. The Quad Cities Inservice Testing Program also provides assurance of valve operability and pump performance where applicable. Flow rate testing of HPCI and RCIC is performed prior to exceeding 325 psig following a refueling outage or an outage in which work was performed that directly affected system operability. Selection of the 325 psig limit for testing ensures stable reactor conditions during the test.

The deletion of the one-time exemption in the RCIC LCO for Quad Cities Unit 1 is strictly an administrative change and does not affect any accident analysis.

The proposed changes do not affect any accident precursors and, therefore, do not increase the probability of an accident previously evaluated. The changes in HPCI and RCIC Operability requirements reflect system design, assure system operability when required, and provide sufficient overlap with low pressure core cooling systems. The changes in testing requirements represent deletion of outdated requirements while implementing provisions that will provide assurance of system operability and, therefore, the changes do not involve a significant increase in the consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not modify HPCI or RCIC design or reduce the capability of these systems to perform their design intent. The proposed changes in testing implement the provisions of the Inservice Testing Program where applicable in the Technical Specifications and follow proven implementation at other operating BWR plants. Even though the testing intervals are relaxed in some places, this relaxation has been demonstrated at other facilities, with similar systems to those at Quad Cities Units 1 and 2, to provide adequate demonstration of component and system operability.

Since HPCI and RCIC system design basis are not changed by the proposed changes, there is no possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed change does not involve a significant reduction in the margin of safety.

The proposed amendment will not significantly reduce the availability of HPCI or RCIC 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 systems when HPCI or RCIC is inoperable. The testing that will remain in the Technical Specifications provides adequate assurance of system performance. Changes to HPCI and RCIC system testing requirements include adoption of proven testing methods at other plants, inclusion of applicable IST program requirements, and inclusion of plant specific testing requirements.

Changes to the operability requirements for HPCI and RCIC are made to recognize design parameters and to provide consistency in operability and shutdown provisions. Actual system operating overlap with the low pressure core cooling systems has not changed since actual system design flow and pressure ability has not been modified. Adoption of the 14-day allowed out-of-service period does not significantly affect the accident mitigation function of the overall core cooling network.

The proposed changes follow similar provisions that are implemented at BWR plants with systems like those at Quad Cities Units 1 and 2. Since the proposed changes will help to assure availability of the HPCI and RCIC systems when required by accident analysis, these changes do not involve a significant reduction in the margin of safety.

Therefore, the NRC staff proposes to determine that this amendment request does not involve significant hazards consideration based upon a preliminary review of the application, the licensee's evaluation of no significant hazards, and NRC guidance.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Acting Project Director: Paul C. Shemanski

Connecticut Yankee Atomic Power Company and Northeast Nuclear Energy Company, et al, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut; Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 29, 1989

Description of amendment request: The proposed amendments would change Technical Specifications (TS) 4.10.1.D.1.h for the Haddam Neck Plant and TS 4.4.5.4.a.8 for Millstone Unit 3. The proposed change to the TS would allow the licensees to inspect steam generator tubes by insertion of the ultrasonic test probe from the cold leg side of the steam generator tube.

Basis for proposed no significant hazards consideration determination: Millstone Unit 3 and Haddam Neck utilize a steam generator tube design shaped as an inverted "U". These steam generator tubes traverse the steam generator from the hot leg to the cold leg side of steam generator tube sheet. Steam generator tubes are periodically subjected to ultrasonic testing (UT) to detect flaws in the tubes. The testing is accomplished by inserting a probe into the tube. At the present time, TS 4.4.5.4.a.8 and 4.10.1.D.1.h define a steam generator tube inspection as "...an inspection of the steam generator tube from the point of entry (hot leg side) completely around the U Bend to the top support of the cold leg." The licensees have proposed that the definition of tube inspection be expanded to also include: "from the point of entry (hot leg or cold leg side) completely around the U-bend to the opposite tube end."

Title 10 CFR 50.92, "Issuance of amendment," contains standards for determining if a proposed license amendment involves no significant hazards consideration. In this regard, the proposed change to TS 4.4.5.4.a.8

and 4.10.1.D.1.h would not involve a significant increase in the probability or consequences of an accident previously evaluated. The purpose of steam generator tube inspections is to locate flaws that could potentially result in a steam generator tube rupture. The proposed change to the TS would maintain the ability of the licensee to identify steam generator tube flaws and take preventive measures to limit the probability of a steam generator tube rupture. Since the intent of the required steam generator tube inspection has not been changed, there is no impact on the probability or consequences of a steam generator tube rupture accident.

The proposed change to the TS would not create the possibility of a new or different kind of accident. The use of UT for steam generator tubes is an established form of inspection that has no adverse effects on the tubes. The proposed change to the TS does not involve a change in the test method, and retains inspection of the hot leg and U-bend sections of the tubes. Probe entry point (hot leg vs. cold leg) will become optional. The choice of entry side has no adverse effect on inspection capability or results.

Finally, the proposed change to the TS would not involve a significant reduction in a margin of safety. Because of the large number of steam generator tubes, the surface area of the tubes represents a substantial fraction of the total primary system boundary area. Thus, steam generator tube integrity is an important part of the overall primary system integrity. The location and repair of excessive steam generator tube degradation will retain the margin of safety with regard to primary system integrity.

Based upon the above, the Commission proposes to determine that the proposed change to TS 4.4.5.4.a.8 and 4.10.1.D.1.h involves no significant hazards considerations.

Local Public Document Room location: Russel Library, 123 Broad Street, Middletown, Connecticut 06457 and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: July 14, 1989

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to delete requirements for leak testing of main steam stop valves (MSSVs). TS 4.8.2 currently specifies leakage testing of the MSSVs at 59 psig during each refueling outage. The specification limits leakage to 25 cubic feet per hour. The apparent basis for the leak rate is for the use of the MSSVs as containment isolation valves in the unlikely event of a simultaneous break of the reactor coolant line and a steam generator feedwater header. The technical basis for the allowable leakage of 25 cubic feet per hour is 25% of the total allowable containment leakage from all penetrations and isolation valves. The acceptance criteria used in the performance test of the MSSVs measure water leakage through the valve seat. This leak rate is not corrected for an equivalent steam/air specific volume.

Through a detailed review and engineering evaluation, the licensee has determined that leak testing of the MSSVs is unnecessary in order to determine the operability of these valves and that the basis for the leak rate testing requirement specified by 4.8.2 is inappropriate. The proposed amendments would delete the leak rate testing specified in TS 4.8.2.

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.

In regard to the proposed amendment, the licensee has determined the following:

Each accident analysis addressed within the Oconee FSAR has been examined with respect to changes proposed within this amendment request. Changes included within this request delete unnecessary requirements for MSSV leak testing. Leak testing of MSSVs is not necessary to assure operability. As such, the probability of any design basis accident is not increased by this change since MSSV operability is assured as well as operation within the bounds of accident analyses addressed in the Oconee FSAR. Therefore, this change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

Operation of Oconee in accordance with these TS will not create any failure modes not bounded by previously evaluated accidents. As such, this change will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

The design basis of the MSSVs is to isolate the faulted steam line from the unfaulted steam line in the event of a main steam line break. In addition, the MSSVs function to isolate the faulted steam generator in the event of a steam generator tube rupture. Changes included within this amendment request will not degrade the ability of the MSSVs to perform these safety functions. Therefore, there will be no reduction in any margin of safety.

The NRC staff has reviewed the licensee's determination related to no significant hazards consideration and concurs with its finding.

On this basis the Commission proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: David B. Matthews

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: June 29, 1989

Description of amendment request: The proposed amendments would revise the Technical Specifications of each unit as follows:

(1) Section 4.1.2.3.2 and 4.1.2.3.3 regarding Unit 1 surveillance requirements of the charging pump and low-head safety injection pump would be modified to provide operational flexibility.

(2) Table 4.3-6 and 4.3-7 of Unit 1 - Notation referencing a non-existent surveillance requirement would be corrected.

(3) Specification 3.3.3.8.a of Unit 2 - The reference to "Specification 3.4.11.a" is a typographical error and would be corrected to "Specification 3.4.11."

(4) Table 3.3-13 - Action 31, regarding grab sampling when one channel of the waste gas decay tank oxygen monitor is inoperable, would be relaxed. In addition, the action statement would be expanded to include the condition when two channels are inoperable.

(5) Section 4.5.1.3 and associated basis - A note would be added to permit, when reactor pressure is less than the low-temperature overpressure setpoint, opening of the accumulator discharge isolation valve to perform check valve testing.

(6) Section 4.6.2.1.b of Unit 1 - The monthly flow testing of the quench spray pumps would be changed to quarterly, consistent with a new edition of the ASME Code Section XI.

(7) Section 3.7.1.5 of Unit 1 - The action statement regarding main steam isolation operability would be clarified by correcting inconsistencies.

(8) Section 4.9.8.1, surveillance requirement of the residual heat removal system - This section would be editorially rearranged for better clarity. In addition, a more stringent surveillance requirement would be imposed during reduced reactor coolant inventory conditions.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazard consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed changes involved only editorial correction of existing requirements, minor changes of existing surveillance requirements or imposition of new surveillance requirements. None of such changes have been previously identified to be precursors of any accident, and none have been a factor in evaluation of accident consequences. Hence the answer to the first criterion is negative. No design, hardware, or operational changes are involved. Hence no new accidents can be created and the answer to the second criterion is negative. Finally, the changes will not affect any plant setpoints, accident analysis assumptions, or technical specification limits. Hence the answer to the third criterion is also negative.

The staff therefore proposes to determine that the requested amendments involve no significant hazards considerations.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: June 30, 1989

Description of amendment request: The proposed amendment would add Technical Specifications which would limit conditions of operation and surveillance requirements for the high range radioactive noble gas effluent monitors. This accident monitoring instrumentation is installed to comply with NUREG 0737, Item II.F.1.1.

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).

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

(1) Involve a significant increase in the probability or the consequence of an accident previously evaluated. The high range radioactive noble gas effluent monitors are installed to provide the plant operator with information on plant releases of noble gases during and following an accident. This capability is required by NUREG 0737 Item II.F.1.1. The addition of specifications for installed accident monitoring instrumentation does not increase the probability or the consequence of an accident.

(2) Create the possibility of a new or different kind of accident from any previously evaluated. It has been determined that a new or different kind of accident will not be possible due to this change. The addition of specifications for installed accident monitoring instrumentation does not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. The proposed specifications will provide added assurance that the operability of the monitors will be maintained within acceptable limits. Therefore, this change does not reduce a margin of safety.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of amendment request: August 15, 1988

Description of amendment request: The proposed amendment would revise TMI-2 Operating License No. DPR-73 by modifying Appendix A Technical Specifications Sections 1.0 "Definitions" and 6.0 "Administrative Controls." The proposed changes would revise the staffing requirements for the TMI-2 Safety Review Group (SRG) to reflect the current and future configuration of the facility. The proposed changes also revise the current definition of review significant items and resolve a conflict with the existing regulatory requirements related to the submission of reports to the NRC.

In Section 1 the licensee propose a change in the definition of "Review Significant." The definition currently defines review significant items as those system operating procedures and associated emergency, abnormal, alarm response procedures which require NRC approval. The licensee proposes to change the definition to state specifically the procedures which still require NRC approval.

License amendment No. 30, dated May 27, 1988 deleted the requirement for NRC prior approval of procedures except those specified by section 3.1.13. The revised definition of "Review Significant" would limit review of procedures to those specified by Section 3.9.13.

Section 6.5 defines the licensee's review and audit requirements for TMI-2. The licensee proposes to reduce the minimum staffing requirement for the TMI-2 Safety Review Group (SRG) after completion of defueling and elimination of the possibility of a criticality. The SRG would be reduced from one manager and five engineers to one manager and three engineers. The licensee further proposes that once all canisters containing fuel have been shipped offsite the SRG would be eliminated. In its place the licensee proposes to implement a new requirement for Independent Safety Reviewers (ISRs). These ISRs would perform the independent review of the subjects listed in Specification 6.5.2.5. The licensee states that following the completion of defueling the reduction in the minimum SRG staffing requirement to a manager and three engineers can be implemented without significantly affecting the ability of the SRG to

perform its required functions. The licensee believes that the proposed reduction in the SRG minimum staffing requirements is appropriate based on the reduced scope of the cleanup activities after the end of defueling.

Once all fuel in canisters have been shipped offsite the reactor vessel and the reactor coolant system drained the potential for a release exceeding the guidelines of 10 CFR 50 Appendix I will be essentially eliminated. The potential for any immediate notification as required by by 10 CFR 50.72 or reportable by 10 CFR 50.73, both of which currently require SRG review, will be unlikely. Most plant systems and components will be isolated and not operating. The licensee believes that the need for the SRG will no longer exist. The ISRs will perform the function previously performed by the SRG. Changes to procedures will continue to receive review and approval by Responsible Technical Reviewers (RTRs).

Section 6.9.1, Routine Reports and Reportable Occurrences, and 6.9.2, Special Reports, require that specific reports be submitted to the NRC Region I Administrator unless otherwise noted. The licensee proposes to change both sections and specify that reports be submitted in accordance with 10 CFR 50.4. Specific requirements for the submission of reports are contained in 10 CFR 50.4. The proposed change is administrative in nature and removes any conflict with existing regulatory requirements and the current technical specifications.

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(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.

TMI-2 is currently in a post-accident, cold shutdown, long-term cleanup mode. The licensee is presently completing the defueling of the damaged reactor, and readying the plant for long-term storage. As of the end of June 1989, greater than 90 percent of the fuel contained in the reactor vessel has been removed. Defueling activities will be completed in the fall of 1989. The staff has determined in previous license amendments, that the potential accidents analyzed for TMI-2 in the current cleanup-mode are bounded in scope and severity by the range of accidents originally analyzed in the facility FSAR. The changes proposed by the licensee are changes to the Appendix A Technical Specifications.

The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated because no changes are proposed to current safety systems or setpoints. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because no new modes of operation or new equipment are being introduced. The proposed changes revise the review procedures for the facility and as such do not directly affect the potential or severity of an accident at TMI-2. The proposed changes in review procedures is commensurate with the potential and severity of an accident at TMI-2 during these last phases of the current cleanup effort. The proposed changes do not involve a significant reduction in the margin of safety, because, as mentioned previously, the changes are either administrative in nature or eliminate unnecessary personnel or review requirements.

Based on the above considerations, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601 Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

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: June 12 and July 17, 1989

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 5.3.1, "Fuel Assemblies," to increase the maximum enrichment of reload fuel from 3.5 weight percent U-235 to 4.55 weight percent U-235. Associated with the higher enriched fuel is an increase in allowed batch average burnup from 33,000 MWD/MTU to 36,000 MWD/MTU.

Basis for proposed no significant hazards consideration determination: The proposed change is in the Design Features section of the TS and does not involve any change to the Safety Limits, Limiting Conditions for Operation or Surveillance Requirements.

Parameters such as shutdown margin, reactivity coefficients and power peaking factors are not affected by the change. The specification of the fuel enrichment in the Design Features section alone does not uniquely determine nor limit the values of the reactor core parameters contained elsewhere in the TS. Each reload design is evaluated to confirm that the cycle core design adheres to the limits that exist in the current accident analyses and TS. With respect to increasing the maximum enrichment which can be stored in new fuel or spent fuel storage racks, criticality analyses have been performed by the licensee to demonstrate that applicable NRC licensing criteria are met for the receipt and storage of 4.55 weight percent U-235 fuel.

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 amendments, the licensee has determined the following.

(1) The use of reload fuel with an enrichment of 4.55 weight percent U-235 will not involve a significant increase in the probability or consequences of an accident previously evaluated because the enrichment is not a unique parameter in the safety analyses and the change does not affect the normal refueling process that ensures that the core design for each cycle is within the current safety analyses.

(2) This change to the Technical Specifications does not create the possibility of a new or different kind of accident from any previously evaluated because it does not result in any physical changes to the plant, and therefore does not present the possibility of a new or different type of event other than those that have been previously evaluated.

(3) This change will not involve a significant reduction in a margin of safety because it does not result in a change to the types of safety analyses required nor to their acceptance criteria. Criticality analyses have

been performed to demonstrate that the new fuel storage and spent fuel storage criteria will continue to be met.

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, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: June 10, 1988

Description of amendments request: The proposed amendment would change the expiration date for *Facility Operating License No.* DPR–49 for the Duane Arnold Energy Center (DAEC) from June 21, 2010 to February 21, 2014.

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(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards consideration in its request for a license amendment. In the licensee's view, the proposed amendment:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated. No changes will be made in the design or operation of the DAEC. The proposed operating license extension is within the original design considerations for the plant and the current maintenance, surveillance, inspection, and testing practices provide assurance that any degradation of plant equipment will be identified and corrected throughout the operating life of the facility.

(2) Does not create the possibility of a new or different kind of accident. No changes will be made in the design or operation of the facility. The DAEC's inservice testing and inspection program will provide early detection of any age-related problems in structures or components originally designed for the life of the plant prior to their becoming failures. Also, the DAEC is very similar in design and construction to other BWR's which have been in service longer. Therefore, DAEC would expect to learn of any new age-related problems before they develop at the DAEC.

(3) Does not involve a significant reduction in the margin of safety. Neither the Technical Specifications nor the accident analyses which form the bases for the Technical Specifications are affected. Specifically, the inservice inspection and inservice testing requirements are not being changed. No changes to the design or operation of the facility will be made. No margin of safety will be 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 staff has reviewed the licensee's evaluation of the proposed amendment, and agrees with the licensee's conclusion. Therefore, the staff proposes to determine that the proposed amendment to the Facility Operating License does not involve significant hazards considerations.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

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 1, 1989 as modified by letter dated June 15, 1989.

Description of amendment request: By letter dated May 1, 1989, as amended June 15, 1989, the licensee proposed to modify the operability requirements for the High Pressure Coolant Injection (HPCI) system to allow for improved control of feedwater flow during periods of low flow demand. The change would permit the closing of one feedwater pump blocking valve in one HPCI pump train during reactor startup when core power is less than or equal to 25% of rated thermal power. Closing one blocking valve would enhance the control of flow using the bypass valve around the main flow control valve (minimum flow control valve), and reduce the excessive service conditions that result when the main flow control valves are used to control feedwater flow during periods of low flow demand. In addition, the effective use of the minimum flow control valves would reduce thermal cycling that is currently experienced on the reactor feedwater nozzles and feedwater piping.

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 provided the following analysis in its May 1, 1989 submittal:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the HPCI system is not considered an engineering safety feature and its operation is not considered in analyses demonstrating compliance with 10 CFR 50 Appendix K requirements. Since the core spray system is the design basis system for loss-of-coolant accident (LOCA) makeup water capability, operation with one HPCI train available during reactor startup will have no adverse effect on any previously evaluated accident.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As discussed above, modifying the reactor startup procedure to close the feedwater pump blocking valve will improve feedwater flow control, reduce excessive main flow control valve service conditions, and reduce thermal cycling of feedwater nozzles and piping. This change represents a modification to a normal plant evolution that improves operations and may contribute to maintaining the integrity of HPCI/feedwater system components.

(3) The proposed amendment does not involve a significant reduction in a margin of safety since HPCI flow is not credited in establishing safety margins. The core spray system is the design basis system for makeup flow to the core during a LOCA. Although the HPCI system is not a safety-related system, one train of HPCI would be available to provide normal HPCI flow upon automatic LOCA initiation. Additionally the closed feedwater pump blocking valve is a motor-

operated valve capable of being fully open 60 seconds after manual initiation.

The staff agrees with the licensee's analysis. Therefore, 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

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: July 26, 1989

Description of amendment request: Generic Letter 88-16, dated October 4, 1988, from the NRC to power reactor licensees, provided guidance for preparation of applications for removal of cycle-specific parameter limits from facility Technical Specifications. The licensee's application is in response to this NRC initiative. The proposed amendment would revise the Appendix A Technical Specifications of the facility operating limits, applicable to Cycle 13, with a reference to a Core Operating Limits Report, which would specify the values of those limits for future operating cycles. The cycle-specific limits include (a) limiting control rod pattern definition, (b) rod block monitor upscale trip settings, (c) maximum average planar linear heat generation rate and (d) minimum critical power ratio. These limits will be determined in accordance with previously approved methodology. The methodology, described in the staff-approved vendor documents, would not be affected by this amendment. The Core Operating Limits Report for each reload, and any mid-cycle revisions, are to be provided to the NRC upon issuance by the licensee.

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 88-16 for licensees requesting relocation of cycle-specific parameter limits from the Technical Specifications to a reference Core Operating Limits Report. The establishment of these limits in accordance with NRC-approved methodology, and the incorporation of these limits into the Core Operating Limits Report in a manner consistent with Generic Letter 88-16 guidance, will (1) ensure that proper steps are taken to determine the values of these limits, (2) enable the staff to review the values of these limits without the need for prior approval, and (3) eliminate the need for frequent Technical Specifications amendments which are applicable to only a single fuel cycle. The revised Technical Specifications with the deletion of the values of cycle-specific parameter limits and the reference to the Core Operating Limits Report does not create the possibility of a new or different kind of accident from those previously evaluated. It also do not involve a significant reduction in the margin of safety since the changes does not alter the methods and criteria used to establish these limits. Consequently, the proposed removal of the values of cycle-specific limits does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Because the values of cycle-specific core operating limits are simply being relocated to a reference document and will continue to be determined in accordance with an NRC-approved methodology and in a manner consistent with the applicable limits of the safety analysis, the proposed amendment is administrative in nature and does 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 appropriately operated within the limits for cycle-specific parameters nor that specific remedial actions must be taken when these limits are not met. With the removal of the values of these limits from the Technical Specifications, and their incorporation into the Core Operating Limits Report that is to be submitted to the Commission, appropriate means will exist for staff review of the values of these limits. Accordingly, the proposed amendment is administrative in nature and does not impact the operation of the facility in a manner that involves significant hazards considerations.

Based on the above, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Lawrence A. Yandell, Acting.

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

Date of amendment request: July 5, 1989 (Reference LAR 89-08)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to reduce the boron concentration in the Boric Acid System from 12 to 4 weight percent and delete the requirement for heat tracing. As discussed in Generic Letter 85-16, there have been incidents at operating plants in which boric acid crystallization in safety-related system components has been sufficient to render the systems inoperable. The changes proposed in this license amendment request (LAR) would reduce the potential for such incidents at Diablo Canyon and reduce routine maintenance and operations problems associated with the boric acid storage and transfer system. The requirement to maintain heat tracing as a condition for operability would be deleted because the precipitation temperature for 4 weight percent boric acid is much closer to room temperature than for the 12 weight percent boric acid currently in use. The heat tracing system as presently installed with its associated redundancy and alarm capability will be maintained and used as necessary to prevent precipitation.

The specific TS changes proposed would include the following:

(1) TS 3.1.1.1, "Shutdown Margin - Tavg Greater than 200 degrees F." Due to a decrease in boric acid concentration from 12 weight percent (20,000 ppm) to 4 weight percent (7,000 ppm) the borated water flow rate will be increased from 10 gallons per minute (gpm) to 30 gpm.

(2) TS 3.1.1.2, "Shutdown Margin - Tavg Less Than or Equal to 200 degrees F." As in Technical Specification 3.1.1.1,

boron concentration will be decreased from 20,000 ppm to 7,000 ppm and borated water flow rate increased from 10 to 30 gpm.

(3) TS 4.1.2.1, "Flow Path - Shutdown." The surveillance requirement for verification of the temperature of the heat tracing will be changed from 145 degrees F to 65 degrees F and the reference to heat traced portions of the flow path will be deleted.

(4) TS 4.1.2.2, "Flow Path - Operating." The same revisions as in TS 4.1.2.1 will be made. Also, TS 4.1.2.2d, which verifies every 18 months that the flow path to the RCS delivers a flow rate of 10 gpm, will be changed to 30 gpm.

(5) TS 3.1.2.5, "Borated Water Source - Shutdown." Since the boron concentration will be decreased from 20,000 to 7,000 ppm, the minimum usable borated water volume will be increased from 835 to 2,499 gallons. Also, the minimum solution temperature will be changed from 145 degrees F to 65 degrees F, the reference to a heat tracing channel will be deleted, the reference to a minimum boron concentration of 2,000 ppm for Unit 1 Cycle 2 will be deleted, and the cycle dependent notes will be deleted.

(6) TS 3.1.2.6, "Borated Water Source - Operating." Since the boron concentration will be decreased from 20,000 to 7,000 ppm, the minimum usable borated water volume will be increased from 5,106 to 14,042 gallons. Also, the minimum solution temperature will be changed from 145 degrees F to 65 degrees F, the reference to a heat tracing channel will be deleted, the reference to a boron concentration between 2,000 and 2,200 ppm for Unit 1 Cycle 2 will be deleted, and the cycle dependent notes will be deleted.

(7) TS 3.5.5, "Refueling Water Storage Tank." This specification will be revised to reflect that a boron concentration of between 2,300 ppm and 2,500 ppm is being utilized in Units 1 and 2 and the cycle dependent notes will be deleted.

(8) TS 3.9.1, "Refueling Operations - Boron Concentration." The action statement will be revised to reflect the change to 7,000 ppm boric acid solution and the increased boric acid flowrate to 30 gpm.

(9) TS 3.10.1, "Special Test Exceptions - Shutdown." The action statement will be revised to reflect the change to 7,000 ppm boric acid solution and the increased boric acid flow rate to 30 gpm.

(10) TS Bases 3/4.1.2, "Boration Systems." The second paragraph currently states that, "The maximum expected boration capability requirement occurs at EOL from full power equilibrium xenon conditions." This will be replaced by "The maximum expected boration capability occurs at BOL when borating from hot zero percent power to cold shutdown ...." The minimum usable borated water volume of 5,106 gallons will be increased to 14,042 gallons and the boron concentration of 20,000 ppm will be decreased to 7,000 ppm. Also, the reference in the Bases specifying the volume of borated water in the refueling water storage tank (RWST) needed to provide adequate shutdown margin will be changed from 75,000 gallons to 65,784 gallons. The above changes affect Modes 1 to 4.

The requirements for borated water for Modes 5 and 6 are also affected. The boric acid tank (BAT) required volume will change from 835 gallons of 20,000 ppm borated water to 2,499 gallons of 7,000 ppm borated water. The reference in the Bases specifying the water volume in the RWST needed to provide adequate shutdown margin will be increased from 9,690 to 17,865 gallons. Also, the reference to having heat tracing as a requirement for operability of the system is proposed to be deleted.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment will 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 July 5, 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 BAT borated water is not assumed for mitigation of any of the design basis accidents or transients in the FSAR Update. The RWST, however, supplies borated water to mitigate accidents such as, Minor Secondary System Breaks (FSAR Update Section 15.3.2), and, "Rupture of a Main Steam Line (FSAR Section 15.4.2.1)." The new RWST volumes specified in the Bases section of the Technical Specification for the BAT and RWST are bounded by the current volumes specified in the Technical Specifications.

Therefore, this change does not involve a significant increase in 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?

Precipitation in the BIT/BAT recirculation line may cause malfunctions of safety injection flow paths, as discussed in Generic Letter 85-16. Reducing the boric acid concentration from 12 weight percent to 4 weight percent will reduce the probability of precipitation of boric acid in the Emergency Core Cooling flow path. Furthermore, the removal of heat tracing from the technical specifications will have no adverse effect because the fluid temperature will still be required to be maintained above the solubility limit.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The Basis Section, 3/4.1.2, "Boration System," states that the boron injection system ensures that negative reactivity control is available during each mode of facility operation to provide a sufficient boron water source to provide a shutdown margin from expected operating conditions of 1.6% delta k/k after xenon decay and cooldown to 200 degrees and a shutdown margin of 1% delta k/k after xenon decay and cooldown from 200 to 140 degrees. The new BAT volumes of 14,042 gallons of 4 percent boron for Modes 1, 2, 3, and 4 and 2,499 gallons of 4 weight percent boron for Modes 5 and 6 still meet this requirement.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the staff proposes to determine that these changes do not involve 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

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

Date of amendment request: July 7, 1989 (Reference LAR 89-07)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to change the heatup and cooldown curves and delete the surveillance capsule withdrawal schedule. The revised heatup and cooldown curves were calculated using methods described in Revision 2 to NRC Regulatory Guide 1.99, "Radiation Embrittlement of Reactor Vessel Materials," as recommended by Generic Letter 88-11, to predict the effect of neutron radiation on reactor vessel materials while continuing to meet the requirements of 10 CFR Part 50, Appendix G. The Pressure/Temperature (P/T) limit curves in the existing TS are applicable through 6 effective full power years (EFPY). The proposed P/T limits are applicable through 8 EFPY. The expected exposures for the Units 1 and 2 reactor vessels at the end of July 1989 are 3.27 and 2.64 EFPY, respectively. Specific TS changes would include (1) Revision of Figure 3.4-1, "Reactor Coolant System Heatup Limitations," and Figure 3.4-3, "Reactor Coolant System Cooldown Limitations," to update the controlling chemical composition and P/T curves; (2) Deletion of TS 4.4.9.1.2 and Table 4.4-5, "Reactor Vessel Material Surveillance Program Withdrawal Schedule," (the surveillance schedule will be included in the next FSAR Update Revision); and (3) Revision of TS Bases 3/4.4.9 to update information and delete figures and tables that have been included in the FSAR Update, Revision 4.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment will 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 July 7, 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 proposed changes to TS 3/4.4.9, "Reactor Coolant System - Pressure/Temperature (P/T) Limits" and associated Bases revise the heatup/cooldown curves in accordance with NRC Regulatory Guide 1.99, Revision 2. The proposed P/T limits are generally more restrictive than the present P/T limits except in a narrow low temperature band on the heatup curve. The present LTOP pressure setpoint and the enable temperature were reviewed and found to be acceptable for the new P/T limits.

The P/T limits are prescribed as guidance used during normal operation to avoid encountering pressure, temperature and temperature rate-of-change conditions which might cause undetected flaws to propagate resulting in non-ductile failure of the reactor coolant pressure boundary. The P/T limits are not derived from design bases accident events presented in the Diablo Canyon FSAR Update. As such the revision to the P/T limits does not affect the probability or consequences of a previously analyzed accident.

The proposed deletion of TS 4.4.9.1.2 and the associated withdrawal schedule are administrative changes. 10 CFR 50, Appendix H, requires a withdrawal schedule to be established, and repeating the requirement in the Technical Specifications is unnecessary. In addition, deletion of the tables and figures from the Bases is an administrative change. This information will be provided in the Diablo Canyon FSAR Update. These changes are purely administrative.

Therefore, the proposed changes do not involve a significant increase in 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?

Using more conservative vessel embrittlement projections, the proposed revision merely updates the existing pressure/temperature limits. The proposed P/T curves are in general slightly more restrictive than the present P/T limits except in a narrow low temperature band on the heatup curve. The LTOP pressure setpoint and enable temperature are not being changed and have been shown to be set conservatively in accordance with analysis and NUREG-0800 methodology, respectively. The removal of the capsule withdrawal schedule and surveillance requirement is purely administrative. None of the proposed revisions to the TS and associated Bases result in any physical alteration to any plant system, nor is there a change in the method by which any safety-related system performs its function. Therefore, the proposed changes do not create the possibility of a new of different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed updates to the P/T limits are based on the conservative methodology of Revision 2 to NRC Regulatory Guide 1.99. The revisions to TS 3/4.4.9 and associated Bases meet all of the requirements of 10 CFR 50, Appendix G. The removal of the capsule withdrawal schedule and surveillance requirement from the TS does not affect the requirements of 10 CFR 50, Appendix H. The FSAR Chapter 15 safety analyses are unaffected by the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, 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

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: June 7, 1989

Description of amendment request: The proposed amendment would (1) require that the opening angle of containment ventilation isolation valves be limited to 53.5° (90° is fully open) consistent with analysis, (2) incorporate leak testing acceptance criteria for containment ventilation isolation valves and airlocks, (3) provide technical specifications consistent with the Standard Technical Specifications for containment ventilation isolation valves and airlocks, and (4) reduce the personnel air lock door seal test pressure from 10 psig to 3 psig.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis about the issue of no significant hazards consideration which is quoted below:

1. Will operation of the facility in accordance with this proposed change

involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

Proposed Change Number (PCN) 211 will establish technical specification requirements for airlock and isolation valve leak testing acceptance criteria that are not currently in the specifications. The acceptance criteria will ensure that these penetrations can withstand the post accident containment pressure with minimal leakage and that degradation of leakage integrity is detected in a timely manner. PCN 211 will also establish opening limits for the containment vent valves. Provisions to limit the valve openings are currently in place in accordance with NRC requirements. These provisions will minimize the force required to close the valves during a design basis LOCA thus providing additional assurance of the isolation function of these valves. The proposed change will establish requirements to ensure the valve opening limitations are maintained. PCN 211 will incorporate limiting conditions for operation (LCOs) and ACTION statements for the personnel air locks consistent with the Westinghouse Standard Technical Specifications into the Technical Specifications. Finally, PCN 211 will reduce the lower test pressure for the personnel airlock from 10 psig to 3 psig. This change will enhance the reliability of the airlock by limiting unnecessary stresses placed on airlock components during testing at 10 psig. Accident consequences or probability will not be increased since containment pressure during design basis LOCA will seal the inner door. Based on the foregoing, operation of the facility in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with the proposed change create the possibility of a new or different kind or accident from any accident previously evaluated?

Response: No

The changes proposed by PCN 211 establish new technical specification requirements for the containment purge and vent valves and the personnel airlocks. These new requirements are intended to enhance the reliability of the components in their post accident function. Reducing the lower test pressure on the personnel airlock from 10 psig to 3 psig is proposed to minimize stresses placed on the airlock during testing while maintaining a test pressure sufficient to detect degradation of components. Incorporation of LCO's and ACTION statements not currently in the technical specifications may result in avoiding unnecessary plant shutdowns. Therefore, none of the changes proposed by PCN 211 will create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The margin of safety for the containment purge and vent valves and the personnel airlock is defined by the sealing capability in the event of a reactor transient. The changes proposed by PCN 211 are intended to ensure that the sealing capability of these components is maintained and any degradation is detected in a timely manner. Reduction of the lower test pressure for the air lock from 10 psig to 3 psig does not affect the margin of safety since the direction of the test pressure is opposite that which the door would experience during an accident. Testing at 3 psig reduces stresses placed on the door and has been demonstrated to have adequate sensitivity to detect leakage and degradation of components. It is also noted that PCN 211 does not impact the semi-annual air lock testing requirement performed at a test pressure of 49.4 psig. Accordingly, operation of the facility in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Southern California Edison Company, et al., Docket No. 50-362, San Onofre Nuclear Generating Station, Unit 3, San Diego County, California

Date of amendment request: June 12, 1989 (PCN-292)

Description of amendment request: The proposed change would revise Technical Specifications 3/4.4.8.1, "Reactor Coolant System, Pressure/Temperature Limits;" 3.4.1.4.1, "Cold Shutdown - Loops Filled;" 3.4.1.3, "Hot Shutdown;" 3.4.8.3.1, "Overpressure Protection Systems, RCS Temperature less than or equal to 285° F;" and 3.4.8.3.2, "Overpressure Protection Systems, RCS Temperature greater than 285° F." The change would revise the Reactor Coolant System pressure/temperature (PT) limit curves, low temperature overpressure protection (LTOP) temperatures, and associated bases to be effective up to 8 effective full power years (EFPY) of operation. The maximum allowable Reactor Coolant System pressure at any temperature is based upon the stress limitations for brittle fracture considerations. Technical Specification 3/4.4.8.1, "Reactor Coolant System, Pressure/Temperature Limits," provides operational constraints in all modes of reactor operation to ensure that the most stress limiting location in the reactor pressure vessel is not susceptible to brittle failure as a consequence of reactor operations. The neutron-induced enbrittlement of the reactor vessel wall also affects the temperature below which LTOP is required. LTOP is provided by the Shutdown Cooling System (SDCS) relief valves, which must be aligned below the specified temperature to provide assurance that the reactor vessel will be operated in the ductile region in accordance with 10 CFR Part 50, Appendix G, during both normal operation and overpressurization events due to equipment malfunction or operator error. Technical Specifications require alignment of the SDCS relief valves at temperatures below the temperature corresponding to the PT curve pressurizer relief valve set point of 2500 psia. The current Unit 3 RCS PT limit curves in the Technical Specification 3/4.4.8, Figures 3.4-2 and 3.4-3, are valid for 4 EFPY and are based on the adjusted RT_{NDT} of 103° F. The current LTOP temperature is 285° F and provides RCS pressure relief at temperatures below the intersection of the pressurizer relief valve setpoint, 2500 psia, and the 30° F/hr heatup curve.

The proposed change would revise the PT limits for heatup and cooldown shown in Figures 3.4-2 and 3.4-3, respectively, and the LTOP temperature, based on the fluence at 8 EFPY. The minimum boltup temperature would be 86° F as stated in the proposed Technical Specification 3.4.8.1.d. An analysis was conducted by the licensees in accordance with 10 CFR Part 50, Appendix G; Standard Review Plan Sections 5.2.2 and 5.3.2; ASME B&PV Code, Section III, Division 1, Appendix G; and Regulatory Guide 1.99, Revision 2, May 1988. Using values listed in the FSAR Table 5.2-5, "San Onofre 3 Beltline Material," an adjusted RT_{NDT} of 92.4° F was calculated by the licensees based on the projected fluence at 8 EFPY. Separate heatup and cooldown LTOP temperatures, 302° F and 267° F, respectively, were calculated. The LTOP heatup and cooldown temperatures were determined from the intersections of the pressurizer relief valve setpoint and the 60° F/hr heatup curve and 100° F/hr cooldown curve, respectively, at which the LTOP functions must be transferred between the SDCS relief valves and the pressurizer relief valve during heatup and cooldown. The effect on the heatup and cooldown curves due to the PT limits for the closure flange has been analyzed and incorporated

into these curves. The material correlations were based on the copper and nickel content of the reactor vessel in accordance with the new Regulatory Guide 1.99, Revision 2.

The proposed LTOP controlling pressure of 416 psia corresponds to the calculated maximum RCS pressure which could be reached during a postulated overpressurization event in the temperature region where the LTOP system is aligned. Moreover, the licensees state that LTOP controlling pressure is more limiting than the PT limit curves, providing added margin that the PT limit is not exceeded. The licensees believe that the intersections of the LTOP controlling pressure with the 30° F/hr heatup curve provides the temperature at which the heatup rate can be increased to 30° F/hr. The temperatures for which even higher heatup rates are proposed has been determined in a similar manner. Using interpolation, the licensee has constructed a continuous curve of allowed RCS heatup rate versus coolant temperature. The intersection of the LTOP control pressure with the 100° F/hr cooldown curve provides the temperature at which the cooldown rate must be reduced. As described for the heatup curve, the licensee has constructed a curve of the maximum permitted cooldown rate versus RCS coldleg temperature.

The proposed change would also modify Technical Specification Table 4.4-5, "Reactor Vessel Material Surveillance Program - Withdrawal Schedule." This table provides the schedule by which the reactor vessel surveillance capsules are to be withdrawn. The proposal would change the withdrawal time for the first Unit 3 surveillance capsule from 5.6 EFPY to 4.4 EFPY.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

(1) Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

To compensate for any increase in the RT_{NDT} caused by irradiation, limits on the pressure-temperature relationship are periodically changed in accordance with 10 CFR 50, Appendix G, to stay within the stress limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, which the pressure boundary may be subjected to over its service lifetime. The update to Figures 3.4-2 and 3.4-3, which includes new LTOP settings, incorporates the changes of the pressure-temperature relationship analyzed using conservative fluence values. The update, therefore, maintains margins of safety against the nonductile failure of the reactor pressure vessel. The change to Table 4.4-5 provides only a change in schedule for withdrawal of the first surveillance capsule for Unit 3. This change continues to provide a surveillance program that conforms to that originally planned for Units 2 and 3. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change incorporates the change in the RT_{NDT} from an unirradiated condition to reflect the accumulation of fast neutron exposure. All design basis energy addition and mass addition transients have been evaluated previously and there is no significant change in the configuration or operation of the facility due to the proposed change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The purpose of the PT Limit curves is to limit thermal stress induced by the normal load transients, reactor trips, and startup and shutdown operations. The revision to the PT limit curves incorporates the effects of neutron-induced embrittlement in the material to preserve the margin of safety, as required by 10 CFR 50, Appendix G. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC has reviewed this analysis and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George W. Knighton

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: May 25, 1989 (TS 89-03)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant (SQN), Units 1 and 2, Technical Specifications (TS). The proposed changes are to revise Tables 3.3-3, "Engineered Safety Feature Actuation System Instrumentation," 3.3-4, "Engineered Safety Feature Actuation System Instrumentation Trip Setpoints," and 4.3-2, "Engineered Safety Feature Actuation System Instrumentation Surveillance Requirements." The proposed changes add requirements for the logic time delays associated with the auxiliary feedwater (AFW) automatic suction transfer. Specifically, the following changes are proposed: (1) a "Functional Unit" 6.h is added to each of the above tables to include requirements for the AFW suction transfer time delays, (2) the current wording of Table 3.3-3, Action 21, is replaced with a new action appropriate for the AFW suction transfer pressure switches and time delays, and (3) the "Action" and "Minimum Channels Operable" columns for Table 3.3-3, Item 6.g, are revised to reflect the new Action 21 described above. In addition, the wording of Table 4.3-2, "Functional Unit," Item 6.g, is revised to correct an inadvertent omission from a previous license amendment.

Basis for proposed no significant hazards consideration determination: TVA provided the following information in its submittal to support its proposed changes to the TS:

By letter dated November 17, 1987, TVA submitted proposed TS change 87-40. This change revised the AFW suction-pressure, low-trip setpoint and allowable value of Table 3.3-4, Item 6.g, for both units for the turbine-driven AFW pump.

The logic time delays associated with the automatic AFW suction transfer were discussed in the TS 87-40 submittal. TVA identified that the time delays were added to the logic sequence to prevent spurious actuation because of signal noise. This minimizes the potential for the detrimental effects of raw water injection into the steam generators. This design feature is based on economic concerns. At the time, TVA concluded that the time delays should not be included in the TSs because the equipment did not meet the criteria specified in the NRC policy statement on TS content as published in the February 6, 1987, edition of the Federal Register. The inclusion of the logic time delays was discussed with NRC during their review of TS 87-40. During these discussions, it was concluded that, because the logic

timers are an integral part of the actuation sequence for automatically transferring AFW suction, it was appropriate that these be included in the TSs. TVA committed to add the logic timers to the TSs in a November 23, 1988, letter to NRC. NRC recognized this commitment in their December 30, 1988, letter approving TS 87-40. Change 1 described above satisfied this commitment.

The deletion of the current wording of Action 21 of Table 3.3-3 is made to facilitate the generation of a new action appropriate for the AFW suction transfer pressure switches and time delays. Action 21 is not currently applied to any entry in Table 3.3-3. As such, its deletion is considered an administrative change. The new action is proposed to better reflect the significance of an inoperable AFW suction transfer pressure switch or logic timer.

The revisions of the "Action" and the "Minimum Channels Operable" for Table 3.3-3, Item 6.g, are effectively administrative changes to implement the new Action 21 described above. The wording change to the "Functional Unit," 6.g, of Table 4.3-2 is an administrative change to correct an inadvertent omission created in SQN license amendments 29 (Unit 1) and 18 (Unit 2) dated May 5, 1983. This change will make the wording of Table 4.3-2, Item 6.g, consistent with the items in Tables 3.3-3 and 3.3-4.

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:

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.

As described in SQN FSAR [Sequoyah Final Safety Analysis Report], Section 10.4.7.2, the AFW system supplies sufficient feedwater to the steam generators to remove primary system stored and residual core energy in the event of a loss of the main feedwater supply. The preferred sources of water to the AFW pumps are the two nonseismic CSTs [condensate storage tanks]. A seismic, unlimited backup water source is provided by connection to the ERCW [Essential Raw Cooling Water System]. ERCW flow is automatically initiated to the AFW pumps upon receipt of a low suction-pressure signal (FSAR Figure 10.4.7-10).

The addition of the suction swapover logic time delays to the TSs is effectively an administrative change to reflect that the time delays are an integral part of the swapover sequence. The timers are currently calibrated periodically in accordance with [procedure] MI-13.1.2. MI-13.1.2 calibrates the timers to the values established in engineering calculation "Auxiliary Feedwater System Pressure Switch Setpoints." Calibration to these values ensures that adequate NPSH [net positive suction head] is maintained to the AFW pumps during the suction transfer sequence. Since this proposed TS change is essentially administrative in nature and does not affect the AFW suction transfer to its qualified water source, the proposed change will not increase the probability or consequences of an accident previously evaluated. The deletion of the current wording of Table 3.3-3, Action 21, is administrative in nature because the action is not applied to any item listed in Table 3.3-3. As an administrative change, it will not increase the probability or consequences of a previously evaluated accident.

The new wording of Table 3.3-3, Action 21, is selected to create an action that provides an appropriate response to the inoperability of an AFW suction transfer switch or logic timer. A forced plant shutdown resulting from the inoperability of a suction transfer pressure switch or logic timer that affects only one AFW pump is considered to be excessive.

The new wording provides consistency with the AFW system actions of specification 3.7.1.2 and removes the potential for unnecessary plant transients and shutdowns. As such, this proposed change will not increase the probability or consequences of a previously evaluated accident.

The remaining changes are administrative in nature. The first revises the action and minimum channels operable for Item 6.g of Table 3.3-3 to implement the new action described above. The second inserts text that was inadvertently omitted by a previous license amendment. The probability or consequences of an accident previously evaluated are not increased by these proposed administrative changes.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

As described above, the proposed TS change is made to reflect that the logic time delays are an integral part of the automatic AFW suction transfer and is effectively administrative in nature. The proposed changes reflect that the timer settings currently in use for SQN and that the surveillance requirements are consistent with other time delay relays listed in the TSs. Other tabular entries are consistent with those for the AFW suction pressure switches, which are part of the same control loop. The remaining changes are either administrative in nature or reduce the potential for unnecessary plant transients and shutdowns. The function and operation of the automatic AFW suction swapover sequence, as well as the AFW system, are not affected by this change. As such, the possibility of a new or different kind of accident from any previously evaluated is not created.

(3) Involve a significant reduction in a margin of safety.

The primary function of the AFW system is to provide sufficient heat removal capability for heatup accidents following reactor trip to remove the decay heat generated by the core and prevent reactor coolant system overpressurization. The proposed additions to Tables 3.3-3, 3.3-4, and 4.3-2 are administrative in nature and do not affect the AFW system's ability to fulfill its design function. The proposed changes merely reflect that the logic time delays are an integral sequence [in transferring the AFW pump suction] from the CSTs to [the] ERCW. The revised action for inoperable AFW suction transfer pressure switches and logic timers provide a more prudent response in that unnecessary plant transients and shutdowns are avoided. Therefore, 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

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: May 25, 1989 (TS 89-04)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant (SQN), Units 1 and 2, Technical Specifications (TS). The proposed changes are to revise Section 4.8.3.2 and Table 3.8-2 to add a surveillance requirement for the turbine-driven auxiliary feedwater pump (AFW) trip and throttle valves. These valves, 1-FCV-1-51 and 2-FCV-1-51, will be identified in Table 3.8-2 as being bypassed under certain accident conditions. The overload devices for these valves are normally in force during plant operation and bypassed under accident conditions. The proposed changes also identify valves 1-FCV-70-207 and 2-FCV-70-207 in Table 3.8-2 as common to both units.

Basis for proposed no significant hazards consideration determination: TVA provided the following information in its submittal to support the proposed changes to the TS:

The SQN turbine-driven auxiliary feedwater pump trip and throttle valves (valves 1-FCV-1-51 and 2-FCV-1-51) have thermal overload devices that are normally in force during plant operation and bypassed under accident conditions. Problem reporting

document SQQ 880057P was initiated to document the need for testing the bypass circuitry of these valves. As permitted by Regulatory Guide 1.106, "Thermal Overload Protection for Electric Motors on Motor-Operated Valves," TVA proposes to ensure these motor-operated valves will perform their function by conducting a channel functional test of the bypass circuitry at least once every 18 months.

The condensate demineralizer waste evaporator throttle valves (1-FCV-70-207 and 2-FCV-70-207) are common valves to both units. The proposed change will provide administrative consistency by identifying them as such.

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:

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 change to perform a channel functional test of the bypass circuitry has no effect on currently analyzed accidents; the current analysis is based on single-failure criteria and will be unchanged. The proposed change to identify the condensate demineralizer waste evaporator throttle valves as common valves to both units is an administrative change and has no effect on hardware. It [, the amendments request,] therefore does not significantly increase the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The channel functional test of the bypass circuitry is an appropriate surveillance recommended by Regulatory Guide 1.106. The identification of the condensate demineralizer waste evaporator throttle valves as common valves to both units is an administrative change and has no effect on hardware. It [, the amendments request,] therefore does not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. The appropriate testing of the bypass circuitry at least once every 18 months acts to confirm the performance of the turbine-driven auxiliary feedwater pump trip and throttle valves as required; it should act to increase the margin of safety. The identification of the condensate demineralizer waste evaporator throttle valves as common valves to both units is an administrative change and has no effect on hardware. It [, the amendments request,] therefore does not significantly reduce the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for 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: June 20, 1988

Description of amendment request: The proposed amendment would involve several administrative and editorial revisions to the Administrative Controls section of the Technical Specifications, including the Station Review Board's (SRB's) responsibilities and the Company Nuclear Review Board's (CNRB's) audit responsibilities. The proposed changes would also remove investigation and report preparation responsibilities from the SRB and thereby enhance the SRB's intended review and oversight function consistent with the Technical Specifications previously approved by NRC (NUREG-0926, June 1982, and NUREG-0932, August 1982). Also, responsibility for review of the Offsite Dose Calculation Manual (ODCM) and the Process Control Program (PCP) would be reassigned from SRB to the CNRB, consistent with NUREG-0472. Several minor editorial and administrative changes are additionally proposed.

Basis for proposed no significant hazards consideration determination: The Commission provided standards in 10 CFR 50.92 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 analyses in support of a no significant hazards consideration determination. The proposed changes would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the changes are administrative in nature, and provide for increased consistency between license requirements, intended SRB and CNRB functions and the Standard Technical Specifications. Review of the ODCM and the PCP will be made part of the CNRB audit functions and report preparation/investigation activities will be reviewed, rather than performed, by SRB, thus enhancing SRB review function. These proposed changes will have no effect on the safety function of any system or component.

Also, the proposed changes would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes are administrative in nature, provide for increased consistency between license requirements, intended SRB and CNRB functions and the Standard Technical Specifications, and do not affect any assumptions used in previous accident evaluations. All accidents continue to be bounded by previous analysis and the proposed changes will not introduce the possibility of any new or different kind of accident.

Finally, the proposed changes would not (3) involve a significant reduction in a margin of safety because the proposed changes provide for increased consistency between license requirements, intended SRB and CNRB functions and Standard Technical Specifications, do not affect operating practices or limits and do not constitute a modification of a safety-related system.

The NRC staff has reviewed the licensee's proposed no significant hazards determination and agrees with the licensee's analysis. Accordingly, the staff proposes to determine that the proposed changes 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. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: February 23, 1989

Description of amendment request: The proposed changes would revise Section 3/4.6, Table 3.6-l Containment Isolation Valves for North Anna Units 1&2 (NA-1&2) to identify additional valves exempt from the Type C test, to identify valves that are associated with water-filled penetrations for which a Type C test penalty will not be added to the Type A test results, to add containment isolation valves not previously listed, and to delete a valve incorrectly listed in the Table for Unit 1. Certain valves have been determined to be either exempt from the Type C testing penalty for the Type A test results or exempt from Type C testing. The identification of these containment isolation valves is based on the analysis of those penetrations that are maintained in a water-filled configuration during accident conditions, or are part of a closed system in containment. As permitted by III.A.1.(d) of 10 CFR Part 50 Appendix J, those penetrations that are water filled are not required to be vented and drained during the Type A test, however, these valves will continue to be Type C tested. The valves associated with a closed system in containment which do not rupture as a result of a loss of coolant accident are not required to be Type C tested.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes in the plant Technical Specifications (TS) in accordance with the standards of 10 CFR 50.92(c) and has determined that operation of NA-1&2 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change[s] [do] not change the design or operation of any system [or] equipment. Leakage testing continues to be performed in accordance with 10 CFR 50 Appendix J to ensure containment isolation in the event of a release of radioactive material to containment atmosphere or pressurization of the containment. The proposed change[s] [update Table] 3.6-1 and [reflect] the requirements of Appendix J.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The isolation valves associated with water-filled penetrations will continue to be Type C tested and their leakage rates will continue to be added to the local leakage rate. The isolation valves associated with closed systems which will not be Type C tested meet the requirements of 10 CFR 50 Appendix J for exemption.

(3) Involve a significant reduction in the margin of safety. The proposed [changes meet] the requirements of 10 CFR 50 Appendix J to ensure containment isolation.

The NRC staff agrees that the proposed changes to the TS meet the criteria specified in 10 CFR Part 50.92(c) and, hence, proposes to determine that they involve no significant hazards considerations.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: March 1, 1989

Description of amendment request: The proposed change would add a license condition stating that the limiting doses to control room operators would be revised in accordance with the findings specified in the licensee's March 1, 1989 submittal. In December 1986, the NRC conducted a Control Room Habitability Survey at NA-1&2. The survey was documented in an NRC letter dated May 4, 1987 and in NRC Inspection Report 87-19, dated September 10, 1987. The results of the survey identified various control room habitability issues that needed to be resolved. The response to the survey was documented in the licensee's letters dated June 8, 1987 and September 11, 1987. One of the survey issues dealt with control room access during an emergency. The survey identified that the procedure for limiting access to the control room might not be workable. The licensee's response to this issue indicated that an engineering evaluation would be performed to determine the best method for limiting access to the control room following an accident. In September 1988, a followup NRC inspection was performed to resolve the issues opened in the Control Room Habitability Survey. This followup inspection was documented in Inspection Report 88-28, dated November 23, 1988. During this inspection, the licensee committed to provide the results of the engineering evaluation and any proposed corrective actions by February 28, 1989.

The licensee's submittal of March 1, 1989 documents the results of the engineering evaluation and describes the corrective actions taken to ensure compliance with General Design Criterion (GDC) 19 of Appendix A to 10 CFR Part 50.

During accident scenarios at NA-1&2, the control room envelope is pressurized (upon receipt of a control room isolation signal) to 0.05 inch water gauge to minimize in-leakage of air and airborne radioactive material. The pressurization is initially provided by a bottled air system, which has sufficient capacity to supply the control room for 60 minutes. When the bottled air supply is depleted, breathing and pressurization air are provided by an emergency filtered air system which draws air from the turbine building through HEPA and charcoal filters. The emergency ventilation system maintains the control room envelope at a minimum pressure of 0.04 inch water gauge relative to the outside atmosphere. Previous radiological dose evaluations for the control room during accident scenarios assumed zero in-leakage of unfiltered air while the control room envelope is pressurized. Inherent in this assumption was the condition that no doors to the control room are opened. However, the emergency operating procedures at NA-1&2 require personnel to enter and exit the control room envelope during an accident. It was therefore necessary for the licensee to modify the NA-1&2 control room habitability calculations to address the impact to the required door openings on the control room doses. The Condition IV accidents defined in Chapter 15 of the NA-1&2 UFSAR are those which result in the most significant impact on control room habitability. Specifically, the following accident conditions were addressed in the licensee's evaluation: (1) Loss of Coolant Accident (LOCA), (2) Main Steam Line Breaks (MSLB), (3) Fuel Handling Accident (FHA), (4) Steam Generator Tube Rupture (SGTR), and (5) Locked Rotor Accident (LRA).

Calculations were performed to determine the 30-day dose to control

room inhabitants, and the calculations were based on models and methodology which are consistent with NUREG-0800 which assumes unfiltered in-leakage at 10 cubic feet per minute (cfm) for the duration of the accident to account for control room access.

The evaluation determined that the MSLB and the SGTR are the two most limiting accidents for radiation exposure to the control room operator. The results of the licensee's evaluation indicate that the radiation exposure to control room operators is increased above the assumptions currently delineated in Chapter 15 of the NA-1&2 UFSAR. However, all of the accident scenarios that can have a significant impact on control room operator doses were determined to be within the limits specified by GDC-19. Acceptable means of allowing required entries to control room pressure envelope during the first hour of an accident were also identified. This involved several modifications of the NA-1&2 control room habitability system to ensure that doses to control room personnel do not exceed the limits of GDC-19. These modifications included: (1) operation of two fan/filter units of the emergency ventilation system in the recirculation mode for the duration of the accident, (2) initiation of the emergency ventilation recirculation concurrent with actuation of the bottled air system (i.e., on safety injection), and (3) initiation of control room isolation on receipt of a fuel building high-high radiation alarm. The licensee's dose calculations assumed that these modifications were made. For those cases where the system modifications have not yet been implemented, it was verified that intermediate measures, such as temporary procedures, are in place to ensure that GDC-19 requirements will be satisfied.

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 provided the following discussion regarding the above three criteria:

1. The change does not involve a significant change in the probability or consequences of an accident previously evaluated. There are no system changes which increase the probability of an accident occurring. The effects on the analysis for each accident has been investigated, and the doses to control room personnel were found to increase. This increase is not significant because the revised doses remain below the limits in GDC-19 of Appendix A of 10 CFR 50, and meet the guidelines of NUREG-0800 (Section 6.4).

2. No new accident types or equipment malfunction scenarios will be introduced as a result of the recommended emergency ventilation system changes. Therefore, the possibility of an accident of a different type than any evaluated previously in the [NA-1&2] UFSAR is not created.

3. There is no significant reduction in the margin of safety. The revised dose calculations for all accidents continue to meet the appropriate GDC-19 limits for the recommended modifications to the emergency ventilation system. The GDC-19 limits will also be met for the [intermediate measures] and [temporary] procedure changes.

The NRC staff has made a preliminary review of the licensee's above analyses of the proposed change and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: July 24, 1989

Description of amendment request: The proposed change would modify the Administrative Controls Section of the Technical Specifications (TS) which identifies the membership composition of the Station Nuclear Safety and Operating Committee (SNSOC) by adding the Superintendent-Engineering to the list of members.

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 change in accordance with the requirements of 10 CFR 50.92 and has determined that the request does not involve significant hazards considerations in that it would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated, because the [change reflects] administrative considerations and [does] not change the plant design or operation. Presently, provisions made in the Technical Specifications for the appointment of alternate members to the SNSOC may be utilized with regard to the Superintendent-Engineering. The proposed change merely allows the augmentation of the pool of members readily available to convene meetings of the SNSOC; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated, because, as above, plant design or operation is not affected by [the] proposed [change], or

(3) Involve a significant reduction in a margin of safety, because neither plant design or operation is affected. [The] proposed [change does] not alter the function, alternates, meeting frequency, quorum, responsibilities, authority, or records of the SNSOC as defined by the Administrative Controls of the Technical Specifications.

Based on the staff's review of the licensee's evaluation, 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 Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: June 12, 1989

Description of amendment request: The proposed license amendment would provide Technical Specification (TS) clarification by redefining the current measure of fuel oil supply for the emergency diesel generators' (DG's)

storage tanks from a quantity of time, to a quantity of volume. The amendment would also clarify the bases of the required storage capacity.

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 Technical Specification change and has determined that the changes would involve no significant hazards consideration. The licensee's basis for this conclusion is that the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not involve any alterations to the way the emergency diesel generators are operated or constructed. Rather, the new TS defines an adequate fuel oil volume capacity that is essential for sustaining continuous operation of one diesel generator for 7 days as assumed in the USAR and required by NRC accepted guides and standards. Therefore, this change does not 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 analyzed. The proposed amendment would not involve a significant change in the assumptions specified in the USAR, therefore it would not place the plant in an unanalyzed condition. The 8-hour supply provided by the day tank would be changed to indicate a specific volume requirement of 1000 gallons. The proposed minimum volume specification is well within the guidelines specified in Regulatory Guide 1.137 and ANSI standard N-195-1976. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Involve a significant reduction in a margin of safety. The proposed change will decrease the fuel oil in each diesel generator's respective day tanks and increase the amount of fuel oil in the two underground storage tanks. The total onsite storage of fuel will increase. Although the proposed day tank specification is reduced, there is still a wide margin of conservatism with respect to ANSI N195-1976/ANS-59.51. Thus, there is no significant reduction in the margin of safety.

The staff has reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq. Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082.

NRC Project Director: John N. Hannon.

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.

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: July 12, 1989

Brief description of amendment request: This amendment requests modification of the Technical Specifications to reflect a change in the reactor vessel level (narrow range) and reactor pressure instrumentation calibration frequency from once per six months to once per operating cycle.

Date of publication of individual notice in **Federal Register:** July 19, 1989 (54 FR 30296)

Expiration date of individual notice: August 17, 1989

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (Regional Depository), Commonwealth and Walnut Streets, Box 1601, Harrisburg, Pennsylvania 17126.

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.

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, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: June 17, 1987, supplemented May 6, 1988 and June 23, 1989.

Brief description of amendments: These amendments modify the Technical Specifications 3.4.6.1b to allow 7 days to restore the Containment Floor Drain and Reactor Cavity Flow Monitoring System to operable before shutting down the plant.

Date of issuance: July 26, 1989

Effective date: July 26, 1989

Amendment Nos.: 31 for Byron and 21 for Braidwood

Facility Operating License Nos. NPF-37 and NPF-66. The amendments revised the Technical Specification.

Date of initial notice in **Federal Register:** September 9, 1987 (52 FR 34001). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 26, 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.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Acting Project Director: Paul C. Shemanski

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: January 30, 1989

Brief description of amendments: These amendments revise the LaSalle County Station, Units 1 and 2 Technical Specifications by revising the MAPLHGR Limits Curves to reflect the higher nodal exposures values for specific fuel types.

Date of issuance: July 20, 1989

Effective date: July 20, 1989

Amendment Nos.: 69 and 51

Facility Operating License Nos. NPF-11 and NPF-18. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 19, 1989 (54 FR 15825). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 20, 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

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: January 10, 1989.

Brief description of amendment: The amendment revises the Technical Specifications to (a) split and revise existing Technical Specification (TS) Section 3.3.1.5 "Isolated Loop," into Sections 3.3.15 "Isolated Loop" (Modes 1 and 2) and 3.3.1.6 "Isolated Loop" (Modes 3, 4, 5 and 6), (b) renumber and revise existing TS Section 3.3.1.6 "Isolated Loop Startup," to TS Section 3.3.1.7 "Isolated Loop Startup," (c) split and revise existing TS Section 3.3.1.7 "Idle Loop," into Sections 3.3.1.8 "Idled Loop" (Modes 1 and 2) and 3.3.1.9 "Idled Loop" (Modes 3, 4, 5 and 6), and (d) split and revise existing TS Section 3.3.1.8 "Idled Loop Startup," into Sections 3.3.1.10 "Idled Loop Startup" (Modes 1 and 2) and 3.3.1.11 "Idled Loop Startup" (Modes 3, 4, 5 and 6). Currently, the TS requires that the boron concentration in the idled/isolated loops be maintained greater than or equal to the boron concentration in the operating loops. The revised TS will separate Modes 1 and 2 from Modes 3, 4, 5 and 6. In Modes 1 and 2 the existing TS will remain unchanged while in Modes 3,4, 5 and 6, the revised TS will require a boron concentration in the idled/isolated loops that is greater than or equal to the shutdown margin requirements as specified in existing TS 3.1.10.2, 3.10.1.3 and 3.13.

Date of Issuance: July 18, 1989

Effective date: July 18, 1989

Amendment No.: 119

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18946). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 18, 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

Date of application for amendment: April 14, 1989, as supplemented June 16, 1989.

Brief description of amendment: The amendment changes Technical Specifications 3.17.1, "Axial Offset" and 3.17.2 "Linear Heat Generation Rate" to allow coastdown operation of the Haddam Neck Plant at the end of Cycle 15. The change in the axial offset limits and revised linear heat generation rate will assure that the peak clad temperature remains below the Interim Acceptance Criteria of 2300° F.

Date of Issuance: July 20, 1989

Effective date: July 20, 1989

Amendment No.: 120

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1989 (54 FR 23308). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 20, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: December 28, 1988, as clarified May 10, 1989

Brief description of amendment: The amendment adds a new surveillance requirement to Technical Specification 4.16 requiring periodic leak testing of the low head injection line check valves 897A-D and RHR check valves 838A-D. The amendment also makes certain editorial changes in Technical Specification 4.16 which are administrative in nature.

Date of issuance: July 19, 1989

Effective date: July 19, 1989

Amendment No.: 142

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 25372). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library,

100 Martine Avenue, White Plains, New York 10610.

NRC Project Director: Robert A. Capra

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: June 12, 1987, as supplemented July 9, 1987, January 8, 1988, and May 3, 1989.

Brief description of amendments: The amendments modified the Technical Specifications by adding operability and surveillance requirements for radioactive liquid effluent monitoring instrumentation for water from the turbine building sump after treatment by an alternate demineralizer system.

Date of issuance: July 18, 1989

Effective date: July 18, 1989

Amendment Nos.: 66 and 60

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 23, 1987 (52 FR 35791). Because the January 8, 1988, and May 3, 1989, submittals 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 July 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: April 26, 1989

Brief description of amendments: The amendments modified Technical Specification Tables 3.3-7 and 4.3-4 to change the elevation at which seismic monitor 1MIMT 5010 is located.

Date of issuance: July 18, 1989

Effective date: July 18, 1989

Amendment Nos.: 67 and 61

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 25373). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: January 22, 1989, as supplemented May 17 and June 19, 1989.

Brief description of amendments: The amendments updated pressure and temperature limits for heatup and cooldown of the reactor coolant system.

Date of issuance: July 18, 1989

Effective date: July 18, 1989

Amendment Nos.: 100 and 82

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 5, 1989 (54 FR 13763). Because the May 17 and June 19, 1989, submittals clarified or corrected 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 July 18, 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

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: September 6, 1988

Brief description of amendments: The amendments modified the Technical Specifications to change the action level regarding suppression pool temperature from 95° F to 100° F.

Date of issuance: July 18, 1989

Effective date: July 18, 1989

Amendment Nos.: 165 and 102

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 2, 1988 (53 FR 44251). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of application for amendment: March 20, 1989

Brief description of amendment: The amendment changes Technical Specification 4.6.F.2 so that reactor coolant activity sampling would be required only once every 24 hours at times when the continuous activity monitor is out of service and the reactor coolant temperature is equal to or less than 212° F.

Date of issuance: July 18, 1989

Effective date: July 18, 1989

Amendment No.: 166

Facility Operating License No. DPR-57. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 31, 1989 (54 FR 23313). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 18, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: December 21, 1988

Description of amendment request: The change will delete the limitation on use of the drywell vent and purge system.

Date of issuance: July 24, 1989

Effective date: July 24, 1989

Amendment No.: 23

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 19, 1989 (54 FR 15829). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 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.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: June 6, 1988, as amended by letters dated July 22 and November 8, 1988.

Brief description of amendment: This amendment deletes 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 Section 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 8, 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.

Date of issuance: June 30, 1989

Effective date: June 30, 1989

Amendment No.: 9

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 7, 1988 (53 FR 34608) and renoticed on May 17, 1989 (54 FR 21312). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 1989.

No Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

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 application for amendment: April 21, 1988

Brief description of amendment: The amendment revises the Technical Specifications by transferring the air start receiver requirements for EDG*2 from 4.8.1.1.2.a.7 to 4.8.1.1.2.a.8 and reducing the minimum allowable pressure for the Division III (EDG*2) emergency standby diesel generator air start receivers from 225 psig to 190 psig.

Date of issuance: July 12, 1989

Effective date: July 12, 1989

Amendment No.: 10

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 15, 1988 (53 FR 22402). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 1989.

Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

NRC Project Director: Robert A. Capra

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: August 14, 1987, as revised January 4, February 10, and August 31, 1988.

Brief description of amendment: This amendment revises Section 6 of the plant Technical Specifications to: (1) remove the figures depicting corporate and plant organizational charts and specifying, in lieu thereof, general requirements that capture the essential aspects of the organizational structure that are defined by existing onsite and offsite organization charts, in accordance with the guidance provided in NRC Generic Letter 88-06; and (2) delete the requirement for plant management and support staff, not assigned to a rotating operations shift, to hold a current Senior Reactor Operator license.

Date of issuance: July 14, 1989

Effective date: July 14, 1989

Amendment No.: 68

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 5, 1988 (53 FR 39174). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 14, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

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: March 20, 1989 (Reference LAR 89-02), as supplemented by letter dated June 29, 1989.

Brief description of amendments: The amendments revised Technical Specifications Section 6, "Administrative Controls," to change the requirements for membership of the General Office Nuclear Plant Review and Audit Committee (GONPRAC), and for routine and special reports. Other portions of the amendment request were denied by the Commission.

Date of issuance: July 19, 1989.

Effective date: July 19, 1989.

Amendment Nos.: 43 and 42.

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** May 3, 1989 (54 FR 18950). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 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

Public Service Electric & Gas Company, Docket No. 50-311, Salem Generating Station, Unit No. 2, Salem County, New Jersey

Date of application for amendment: May 5, 1989

Brief description of amendment: This amendment deleted the criterion from specification 4.7.9.e.1 that requires expanding the sample if the measured drag force of mechanical snubbers exceeds the previously measured drag force by more than 50%.

Date of issuance: July 20, 1989

Effective date: As of the date of issuance to be implemented within 45 days of the date of issuance.

Amendment No. 75

Facility Operating License No. DPR-75: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 25377). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 20, 1989.

No significant hazards consideration comments received: No

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 application for amendment: February 28, 1986, as supplemented May 14, 1987 and August 31, 1988.

Brief description of amendment: The amendment revises Technical Specification 3.6, "Reactor Building," and Table 3.6-1, "Containment Isolation Valves," to (1) allow an increase in the maximum closure time for selected containment isolation valves and (2) add 12 valves to the table.

Date of issuance: July 17, 1989

Effective date: July 17, 1989

Amendment No.: 112

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 25377). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 17, 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

Dates of applications for amendment: March 31, 1987, supplemented December 21, 1987 and January 31, 1989; July 6, 1987, supplemented May 16, July 18, and December 22, 1988, and January 6, 1988.

Brief description of amendment: The amendment changes the Technical Specifications (TS) by revising: (1) TS 6.1.1, 6.5.1, and 6.5.3 to change the title for the job currently titled Director, Nuclear Plant Operations to General Manager, Nuclear Plant Operations; (2) TS 6.4 to meet training requirements specified in ANSI 3.1-1981, "Qualification and Training of Personnel for Nuclear Power Plants," and 10 CFR 50.59, "Requalification"; (3) TS 6.2.1 to reflect the recommendations of Generic Letter (GL) 88-06, "Removal of Organization Charts from Technical Specifications Administrative Control Requirements"; (4) deletion of TS Figures 6.2-1 and 6.2-2 consistent with the recommendations of GL 88-06; and (5) TS 6.5-1 and 6.5-3 to reflect new titles and new constituency resulting from the reorganization which occurred in January 1988.

The amendment also deletes the existing TS on fire protection, and modifies License Condition 2.C.(18) to require Commission approval if the change to the fire protection program would adversely affect the capability of the station to achieve and maintain safe shutdown in the event of fire. This amendment is effective as of its date of issuance and shall be implemented within 90 days of the date of issuance.

Date of issuance: July 24, 1989

Effective date: July 24, 1989

Amendment No.: 79

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Dates of notices in **Federal Register:** July 9, 1987 (52 FR 28388), September 9, 1987 (52 FR 34019), February 24, 1988 (53 FR 5496), May 4, 1988 (53 FR 15916), August 10, 1988 (53 FR 30142) and August 24, 1988 (53 FR 32296).

The additional submittals of December 22, 1988 and January 31, 1989 provided clarifying information that did not change the 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 July 24, 1989

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: April 26, 1988, October 11, 1988, December 16, 1988, January 20 and March 28, 1989.

Brief description of amendments: The amendments revised the following Technical Specifications (TS) to increase the interval for the 18 month surveillance tests to at least once per refueling interval, which is defined as 24 months: TS 3/4.3.3.10, "Loose-Part Detection Instrumentation"; TS 3/4.8.4.1, "Containment Penetration Conductor Overcurrent Protective Devices"; TS 3/4.6.4.3, "Containment Dome Air Circulators"; TS 3/4.7.1.2, "Auxiliary Feedwater System"; TS 3/4.7.3, "Component Cooling Water System"; TS 3/4.7.4, "Salt Water Cooling System"; TS 3/4.7.10, "Emergency Chilled Water System" and TS 3/4.7.8.1, "Fire Suppression Water System."

Date of issuance: July 28, 1989

Effective date: July 28, 1989

Amendment Nos.: 75 and 63

Facility Operating License Nos. NPF-10 and NPF-15: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** March 8, 1989 (54 FR 9931 and 9934), March 22, 1989 (54 FR 11843) and May 3, 1989 (54 FR 18961). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 27, 1989 and an Environmental Assessment dated July 24, 1989 (54 FR 31394).

No significant hazards consideration comments received: No.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority ,Docket No. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: May 15, 1989 (TS 269)

Brief description of amendments: These amendments modify the Limiting Conditions For Operation (LCO) and Surveillance Requirements (SR) for the control room emergency ventilation system (CREVS) 4.7.E.4 and Technical Specification (TS) 4.11.B.3.a.(3) Fire Pump Battery Cell Voltage as follows:

(1) TS 4.7.E.4 is being updated to add a CREVS isolation damper which was added by a design change.

(2) TS 4.11.B.3.a.(3) is revised to correct an administrative error in the listed value for the fire pump battery pilot cell voltage.

Date of issuance: July 19, 1989

Effective date: July 19, 1989

Amendments Nos.: 168, 168, 139

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 14, 1989 (54 FR 25378). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 5, 1988 (TS 88-06)

Brief description of amendments: The amendments modify the Sequoyah Nuclear Plant, Units 1 and 2 Technical Specifications (TS). The changes are to relax the test frequency for the containment purge supply and exhaust isolation valves. Surveillance Requirement (SR) 4.6.3.4 which is deleted stated that each containment purge isolation valve be demonstrated operable within 24 hours after each closing of the valve except when the valve is being used for multiple cyclings. Any purge valve that has undergone multiple cyclings is required to be tested at least every 72 hours. Operability is demonstrated by performance of a Type C leak test of Appendix J to 10 CFR Part 50. This test is to verify that the measured leakage rate from each purge valve, when added to the leakage rates for all other Type B and Type C penetrations, does not exceed 60 percent of the maximum containment leakage rate (La).

In lieu of SR 4.6.3.4, a new surveillance requirement is added under Containment Ventilation System Specification 3.6.1.9. The new SR 4.6.1.9.3 relaxs the 24/72-hour test requirement to include a 3-month test interval and establishes a specific maximum leakage rate of 0.05 La for each purge valve. An action statement from Revision 5 of the NRC Standard Technical Specifications (STS) is added to address operability requirements for leakage in excess of 0.05 La to be consistent with the revised surveillance requirement. These changes are patterned after Revision 5 of the NRC STS.

Date of issuance: July 5, 1989
Effective date: July 5, 1989
Amendment Nos.: 120, 109
Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.
Date of initial notice in Federal Register: December 30, 1988 (53 FR 53101). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 5, 1989.
No significant hazards consideration comments received: No
Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: September 30, 1988
Brief description of amendments: The amendments allow direct reactor trip on turbine trip to be blocked below 30% of rated thermal power. Implementation of the amendments shall take place no later than the end of the next refueling outages for NA-1&2.
Date of issuance: July 18, 1989
Effective date: July 18, 1989
Amendment Nos.: 119 and 103
Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.
Date of initial notice in Federal Register: November 16, 1988 (53 FR 46164). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1989.
No significant hazards consideration comments received: No.
Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: April 13, 1989
Brief description of amendment: This amendment revised 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.
Date of Issuance: July 5, 1989
Effective date: July 5, 1989
Amendment No.: 32
Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: May 17, 1989 (54 FR 21318). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 5, 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 September 8, 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).

Duquesne Light Company, Docket No. 50-334 Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: June 22, 1989

Brief description of amendment: The amendment raises the maximum allowed service water (river water) temperature from 86° F to 90° F. The amendment also revises a number of requirements associated with this change.

Date of issuance: July 27, 1989

Effective date: July 27, 1989

Amendment No.: 143

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. Published in **Federal Register** July 26, 1989 (54 FR 31105). The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated July 27, 1989.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts &

Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

NRC Project Director: John F. Stolz

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of Application for amendment: June 10, 1989

Brief description of amendment: The amendment changed the Technical Specifications to add a footnote to Surveillance Requirement 4.1.3.5.b.2 so that applicability would be required at or below 600 psig reactor vessel pressure. A temporary waiver of compliance from this provision of the Technical Specifications was granted by letter dated June 9, 1989.

Date of Issuance: July 24, 1989

Effective Date: June 9, 1989

Amendment No.: 31

Facility Operating License No. NPF-39: Amendment revised the Technical Specifications

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, consultation with the State of Pennsylvania, and final no significant hazards considerations determination are contained in a Safety Evaluation dated July 24, 1989.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, Washington, DC 20036

Local Public Document Room Location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464

NRC Project Director: Walter R. Butler

Dated at Rockville, Maryland, this 2nd day of August, 1989.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[Doc. 89-18515 Filed 8-8-89; 8:45 am]

BILLING CODE 7590-01-D

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co., Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-4 and NPF-7, issued to Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Units No. 1 and 2 (NA-1&2) located in Louisa County, Virginia.

The proposed changes would revise the NA-1&2 Technical Specifications (TS) 3/4 3.21 and the TS definition of slave relay testing and clarify the testing requirements for Engineered Safeguards Features (ESF) slave relays. The proposed changes would also add a requirement to test the selected ESF protection system slave relays on a quarterly test frequency. This change is consistent with the latest revision of the Westinghouse TS. The proposed changes also exclude the quarterly testing requirements those relays which satisfy the following criteria: (1) A single failure in the Safeguards Test Cabinet circuitry would cause an inadvertent Reactor Protection System (RPS) or ESF actuation, (2) the test would adversely affect two or more components in one ESF system or two or more ESF systems, and (3) the test would create a transient (reactivity, thermal, or hydraulic) condition on the Reactor Coolant System (RCS).

These criteria were established following an extensive evaluation of the capability of NA-1&2 to perform online testing of slave relays. The evaluation referenced the material submitted to the NRC dated May 8, 1989, and also included a technical assessment and failure analysis of the installed hardware that would be used for testing the relays. In addition, the system effects, operational impact, and safety significance of testing these relays were evaluated. Based on the results of this evaluation, it was determined that the additional assurance of equipment operability provided by testing all the relays online would be negated by the adverse consequences such that the overall margin of safety would be reduced.

The testing of some slave relays online would require significant plant manipulations, abnormal configurations, and remove from service various equipment for the duration of the relay test. By imposing off-normal plant manipulations and configurations, there exists some increased probability of human error or component malfunction which may lead to more significant events. In addition, the time to complete this type of testing is expected to take several 8-hour shifts, if not more. For example, the testing of one relay would take over 8 hours to perform. If an actual demand was required during this time, some equipment would not be available to perform its intended safety function. The safety implications of this are significant when considering that a single failure on the opposite train could result in a total loss of an ESF safety function. This could also lead to a more safety significant event and could cause the NA-1&2 design basis and accident analysis to be exceeded.

Finally, the additional risk in testing all the slave relays online is not justified by the failure analysis, operational impact, and safety significance since there presently exists adequate design features, sufficient, safe, and proven testing methods, and administrative controls to assure proper equipment operation.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards considerations. 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. A summary of the licensee's evaluation of the above three criteria is provided below:

1. The proposed changes are based on the licensee's evaluation of transients that could occur from testing ESF relays at power. Many of the ESF relay tests presently required by the NA-1&2 TS create a significant potential for transients which is unacceptable to the licensee. The proposed changes would reduce the potential for causing transients that could challenge safety systems when operating NA-1&2 at power. Therefore, the licensee finds that limiting the at-power relay tests to a select group and decreasing the frequency of testing will not involve a significant increase in the probability or consequences of an accident previously evaluated. In addition, by not testing all of the slave relays at power and placing the plant and equipment in off-normal configurations, the consequences of an accident or the probability of a malfunction would be reduced.

2. The majority of the ESF relays that were evaluated for online testing involved unusual and complex systems manipulations for accomplishing the testing. These system alignments were

considered by the licensee to be unusual and potentially unsafe if conducted during power operations. The limited number of relays selected for testing at power were chosen to ensure that the potential impact on plant operations and the possibility of inducing some type of plant transient is minimized. Therefore, the licensee concludes that the requested changes do not create the possibility of a new or different kind of accident previously evaluated. In addition, the licensee finds the proposed changes reduce the possibility of a new or different kind of accident from those accidents previously evaluated.

3. The licensee's evaluation supporting the proposed changes provides a thorough evaluation addressing the overall plant operational margin of safety. The submittal, as proposed, ensures that overall plant operational safety has been preserved and may have been enhanced by the rigorous evaluation of the potential failure modes and consequences related to ESF relay testing while at power. Therefore, the licensee concludes that the margin of safety has not been decreased by the proposed changes. In addition, the testing of only selected relays provides additional assurance of equipment operability without subjecting the unit to adverse conditions such that the overall margin of safety is increased.

Therefore, based on the licensee's evaluation of the proposed changes as presented above, the Commission has made a proposed determination that the amendment request involves no significant hazards considerations.

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-223, 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 are discussed below.

By September 8, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request 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 party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendments involves no significant hazards considerations, the Commission may issue the amendments and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If a final determination is that the amendments involve significant hazards considerations, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments 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 amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards considerations. The final determination will consider all public and State comments received. 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 Herbert N. Berkow: (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 Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

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 designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the 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 dated July 12, 1989, a supplemented July 26, 1989, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Local Public Document Room located at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 3rd day of August 1989.

For the Nuclear Regulatory Commission.

Leon B. Engle,

Project Manager, Project Directorate II-2, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89-18601 Filed 8-8-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-72]

Unfair Trade Practices; Notice of Public Hearing; Thailand's Restrictions on Access to Its Cigarette Market

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Public Hearing.

SUMMARY: On May 25, 1989, the United States Trade Representative (USTR) initiated an investigation under section 302 of the Trade Act of 1974, as amended, regarding the Royal Thai Government's policies and practices with respect to the importation, distribution and sale of cigarettes. The USTR has received written comments on the issues raised in this investigation, and will conduct a public hearing on this matter on September 19 and 20, 1989.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director for Southeast Asian Affairs, (202) 395-6813, or Catherine Field, Associate General Counsel, (202) 395-3432, Office of the U.S. Trade Representative 600 17th Street, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: On April 10, 1989, the United States Cigarette Export Association (CEA) filed a petition under section 302(a) of the Trade Act of 1974, as amended, 19 U.S.C. 2412(a), alleging that the Royal Thai Government and its instrumentality, the Thailand Tobacco Monopoly (TTM), engaged in acts, policies and practices that are unreasonable or discriminate against imports and burden and restrict U.S. commerce. The Thai government maintains an effective ban on the importation of foreign cigarettes and prohibits foreign investment in cigarette manufacture. The petitioner contends that these bans on importation and investment, combined with high tariffs, discriminatory domestic taxes and TTM distribution practices, deny U.S. firms fair and equitable market opportunities. Finally, the CEA alleges that Thai government restrictions on cigarette advertising are intended to put foreign cigarette brands at a comparative disadvantage.

On May 25, 1989, the U.S. Trade Representative initiated an investigation of the Thai government's policies and practices affecting fair and equitable access to the Thai cigarette market. USTR also requested consultations with the Royal Thai Government, as required by section 303(a) of the Trade Act of 1974, as amended.

Public Hearing: The section 301 Committee will hold a public hearing at 9:30 a.m. on September 19, 1989. The hearing will be conducted in Court Room A (Room 100) at the International Trade Commission, 500 E. Street, SW. Washington DC 20436, and will continue on September 20, if necessary.

Interested parties wishing to testify orally must provide a written request to do so by noon on Friday, September 1, 1989, to Ms. Janet Roell, Staff Assistant to the section 301 Committee, Office of the U.S. Trade Representative, Room 222, 600 17th Street NW., Washington, DC 20506. In addition, they must provide the following information: (1) Name, address, telephone number, and firm or affiliation; and (2) a summary of the presentation. After consideration of a request to present oral testimony at the public hearing, the Chairman of the Section 301 Committee will notify the applicant of the time of his or her testimony, if the request conforms to the requirements of 15 CFR 2006.8(a). Remarks at the hearing will be limited to 5 minutes.

In addition, person presenting oral testimony must submit 20 copies of their complete written testimony, in English, by noon Friday September 8, 1989, to Ms. Roell at the address listed above. All written submissions must be filed in accordance with 15 CFR 2006.8.

In order to assure each party an opportunity to contest the information provided by other parties, the Section 301 Committee will entertain rebuttal briefs filed by any party, in accordance with 15 CFR 2006.8(c), by noon on Friday September 29, 1989.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 89-18562 Filed 8-8-89; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-27093; File No. SR-CBOE-89-06]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to the Arbitration Process and the Use of Predispute Arbitration Clauses

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 8, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule changes as described in Items I and II below, which items have been prepared by the self-regulatory organization ("SRO"). Amendments No. 1 and 2, submitted on May 15, 1989 and July 14, 1989, respectively, proposed additional changes to the Exchange's rules. The CBOE has requested accelerated approval of this proposal because the filing is substantially identical to rule filings of the New York Stock Exchange ("NYSE"), National Association of Securities Dealers ("NASD"), and American Stock

Exchange ("AMEX") that were approved by the Commission on May 10, 1989.[1] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

The proposed rule changes would amend the Exchange's rules for administering arbitration proceedings and address many issues regarding the fairness and efficiency of the arbitration process administered by the Exchange, as well as institute new requirements applicable to the use by Exchange members of predispute arbitration clauses in agreements with customers.

The CBOE developed these proposed rule changes through the auspices of the Securities Industry Conference on Arbitration ("SICA"). The SROs have worked together over the past twelve years to develop uniform arbitration rules through SICA, which is comprised of a representative from each SRO that administers an arbitration program,[2] a representative of the securities industry, and four representatives of the public.

On September 10, 1987, after a review of securities industry-sponsored arbitration, the Commission sent to SICA a letter that set out its views regarding the need for changes to the Uniform Code of Arbitration ("Uniform Code").[3] The Commission also sent letters to the SROs on July 8, 1988 requesting that the SROs review the issues raised by the current use of mandatory predispute arbitration agreements by their member firms.[4] Since September 1987, SICA and its subcommittees have met regularly to develop proposals in response to the Commission's letters.

The majority of the proposals to amend the CBOE's rules were based on changes in the Uniform Code made by SICA largely in response to the September 1987 and July 1988 Commission letters.[5] The other proposals included in this order were developed to meet concerns that have arisen through the administration of the arbitration programs.

Substantially identical rule filings sumitted by the NYSE, AMEX and NASD were approved by the Commission on May 10, 1989. In its approval order, the Commission addressed fully the significant public dialogue and comment that preceded its action. This notice and order granting accelerated approval of the proposed rule change is consistent with the substance of the May 10, 1989 order, and the discussion set out in that order is fully applicable to the CBOE rules approved herein.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule changes is available at the Office of the Secretary, CBOE, and at the Commission's Public Reference Section.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

(a) *Service of Pleadings.* The CBOE proposes to modify the procedures for service of pleadings. Currently, the arbitration department of the CBOE serves all pleadings on the parties. As cases have increased, using the arbitration department as an intermediary for the service of pleadings had added unnecessarily to delays in processing cases and to the cost of operating the arbitration system. The CBOE proposes to serve only the initial pleading in a case, the "claim," and to require that parties serve all subsequent pleadings directly upon one another. This approach is intended to save administrative time and costs while continuing to ensure that respondents receive adequate notice of the institution of arbitration proceedings.

Under amended CBOE Rule 18.15, parties also will be required to supply the department of arbitration with sufficient additional copies of the pleadings for the arbitration department staff and each of the arbitrators. Additionally, the proposal specifies that service by first-class postage prepaid or by overnight mail service is considered to be made on the date of mailing and service by other means is considered to be made on the date of delivery.

This proposed rule change would apply both to arbitration proceedings conducted pursuant to the simplified procedures for small claims under CBOE Rule 18.4 and regular cases initiated pursuant to CBOE Rule 18.15.

(b) *Classification of Arbitrators.* The arbitration panels at the SROs for cases involving public customers have historically been composed of a majority of "public arbitrators" and a minority of "industry arbitrators". However, there have not been clear requirements or specifications for who may serve as a public arbitrator. Under the Exchange's proposal, amended CBOE Rule 18.10 would specify who may not serve as a public arbitrator and who may serve as an industry arbitrator.

The CBOE's proposal addresses the potential for real or apparent bias on the part of public arbitrators who may have some professional or personal association with the securities industry. CBOE Rule 18.10 defines as an industry arbitrator one who is associated with a member of an SRO, broker, dealer, government securities broker, government securities dealer, municipal securities dealer, or registered investment adviser. CBOE Rule 18.10 also deals with the appropriate role in the arbitration system of professionals such as attorneys or accountants who provide services to securities industry clients. The rule would classify as industry arbitrators, rather than public arbitrators, attorneys, accountants and other professionals who devoted twenty percent or more of their professional work effort to securities industry clients within the last two years. In addition, the rule excludes from service as a public or industry arbitrator persons who are spouses or other members of the household of a person associated with a registered broker-dealer, municipal securities dealer, government securities dealer or investment adviser.

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[1] Securities Exchange Act Release No. 26805 (May 10, 1989), 54 FR 21144 (May 16, 1989) (approving Files No. SR-NYS-88-8, SR-NYSE-88-29, SR-NASD-88-29, SR-NASD-88-51, SR-NASD-89-19, and SR-AMEX-88-29) ("May 10, 1989 Order").

[2] The SROs that administer an arbitration program are the CBOE, NYSE, NASD, AMEX, Municipal Securities Rulemaking Board, Pacific Stock Exchange, Midwest Stock Exchange, Boston Stock Exchange, Cincinnati Stock Exchange and Philadelphia Stock Exchange.

[3] *See* letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to James E. Buck, Senior Vice President, NYSE, dated September 10, 1987. This letter was also addressed separately to each of the other members of SICA.

[4] *See* letter from David S. Ruder, Chairman, SEC, to John J. Phelan, Jr., Chairman, NYSE dated July 8, 1988. This letter was also addressed to the senior executive officers of all other SROs that administer arbitration facilities.

[5] The Exchange's rules developed in response to the Commission's letters are CBOE Rules 18.10, 18.11, 18.13, 18.15(e), 18.27, 18.31 and 18.35.

CBOE Rule 18.10 permits an individual who had been associated with the securities industry to become a public arbitrator after five years, if the individual has gone on to other work and is not retired from the securities industry. Also, under the rule, industry retirees will no longer be permitted to serve as public arbitrators, although they may continue to serve as industry arbitrators. In addition, the CBOE proposes to exclude anyone from its public arbitrator rolls who had spent a substantial part of his business career in the securities industry, notwithstanding the passage of five years. Accordingly, under the CBOE proposal, an individual who had worked in the securities industry for a substantial period of time and then left the profession for some other work would not, after five years, be assigned to its public arbitrator roster.[6]

The CBOE is also proposing disclosure provisions designed to assist parties in assuring that the panel assigned to each case is appropriately balanced. Under proposed CBOE Rule 18.11, the employment histories of the arbitrators for the past ten years as well as the information provided by arbitrators pursuant to separate disclosure obligations contained in proposed CBOE Rule 18.13 will be disclosed.[7]

The amendments regarding the classification of arbitrators are designed to promote impartial and knowledgeable decisions in the arbitration of disputes between investors and broker-dealers. The reclassification of securities industry retirees to the industry arbitration pool and the establishment of a five year period before a former securities industry employee may serve as a public arbitrator should relieve any doubts that investors may have had regarding the impartiality of the public arbitrator pool. Similarly, the judgment to exlude from the public arbitrator pool lawyers, accountants and other professionals who regularly service the securities industry makes clearer the distinctions between the two arbitrator pools.

(c) *Arbitrator Disclosure and Background Information to be Supplied to the Parties.* The CBOE is also proposing changes to its rules dealing with disclosures to be made by arbitrators, and with supplying arbitrator disclosures to the parties. Under the current rules, parties have been provided only with the names and current business affiliations of the arbitrators proposed for their cases. The Exchange's proposed rule change would provide the necessary guidance to arbitrators about the types of relationships that may create conflicts of interest. Moreover, parties have had to request specifically any other information from the arbitration departments within very short time frames. The Exchange's proposed rule change would provide to the parties all of the information disclosed by arbitrators pursuant to the amended disclosure rules at the time when the parties are first given the arbitrators' names. This change would provide full disclosure of arbitrators' backgrounds to parties at the earliest possible stage in the process, and should therefore avoid unnecessary postponements of hearings and promote knowledgeable use of challenges.

Accordingly, proposed CBOE Rule 18.13(a) establishes specific disclosure obligations of arbitrators. The rule requires that arbitrators disclose any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. These disclosures extend to any relationships the arbitrators may have with any party, or its counsel, or with any individual whom they have been advised will be a witness. The rule also requires arbitrators to disclose any such relationship involving members of their families or their current employers, partners or business associates.

CBOE Rule 18.13(b) admonishes prospective arbitrators to make a reasonable effort to inform themselves of any interests or relationships described in paragraph (a). Rule 18.13(c) advises arbitrators that the duty to disclose under paragraph (a) of the rule is an ongoing duty, and that any person who serves as an arbitrator must disclose at any stage of the arbitration proceeding any such interests, relationships, or circumstances that arise, or that are recalled or discovered. Also, under Rule 18.13(d), the CBOE has clarified that prior to the first session, the director of arbitration may remove an arbitrator based on information disclosed pursuant to the rule. Parties are to be informed of any information disclosed pursuant to the rule, if the arbitrator has not been removed.[8]

As discussed above, CBOE Rule 18.11 provides that parties will be informed of the names and business affiliations of the arbitrators for the past ten years, as well as any information disclosed pursuant to Rule 18.13 at least eight days prior to the date fixed for the initial hearing session. Under Rule 18.11, parties may also make further inquiry through the department of arbitration concerning the arbitrators' background.

(d) *Appointment of Replacement Arbitrators on a Panel.* The CBOE is also proposing two changes with respect to its ability to appoint a replacement arbitrator on a panel when a vacancy occurs. The first of these changes concerns the ability of the director of arbitration to replace an arbitrator who becomes unavailable to serve less than eight days prior to the first hearing session. Under the proposed amendment, if after appointment and prior to the first hearing session an arbitrator resigns, dies, withdraws, is disqualified or otherwise unable to perform as an arbitrator, CBOE Rule 18.11 authorizes the director of arbitration to appoint a replacement arbitrator. The rule permits the appointment of replacement arbitrators closer than eight days to the hearing. The rule also explicitly provides that parties are entitled to receive the same disclosure regarding the background of the replacement arbitrator as they received for the initial arbitrator(s), and have the same right to request more information, and to challenge the arbitrator as provided in the rules, although within a shorter time frame.

The second change concerning the ability to appoint replacement arbitrators addresses situations where an arbitrator resigns, dies, withdraws, is disqualified or otherwise unable to perform as an arbitrator after the commencement of the first hearing session. Under the CBOE's existing rules, if a vacancy occurs after the hearings have begun, both parties must consent either to the appointment of a replacement arbitrator to hear the rest of the case, or to continuing with the

[6] The CBOE has also included in its filing guidelines for the classification of arbitrators that complement its classification rule. In the guidelines, the CBOE states that while it will continue to classify as public arbitrators lawyers and other professionals whose partners represent the securities industry, it will recognize challenges for cause against them.

[7] The disclosure rules are proposed rule changes discussed in subsection (c) of this notice. The rules require arbitrators to make extensive disclosures to the parties.

[8] One the arbitration panel is sworn, it controls all of the procedural aspects of the hearing. Accordingly, under the Uniform Code and the CBOE's Arbitration Code, the director of arbitration may not remove an arbitrator after the hearings have begun. An arbitrator should be alert to the guidelines set out in the American Bar Association/American Arbitration Association Code of Ethics for Arbitrators in Commercial Disputes ("ABA/AAA Code") and the applicable law with respect to arbitrator bias, and remove himself from the panel when conflicts arise after hearings have begun. *See* Canon II, E.(2) of the ABA/AAAa Code.

remaining arbitrator(s). Otherwise, if that consent cannot be obtained, the case must be reheard from the beginning with a full panel.

The proposed amendment to CBOE Rule 18.14 permits the remaining arbitrators to continue with the hearing and determination of the controversy. However, under the proposal, if a party objects, a replacement arbitrator would be appointed by the director of arbitration under the same procedures as for the replacement of an arbitrator prior to the first hearing. The rule is designed to permit parties in particular cases to make the decision that makes the most sense for their case. For example, in cases where only peripheral issues have been dealt with and relatively little progress has been made, it may make sense for parties to request a replacement arbitrator. Conversely, where the hearings have progressed significantly, or are in fact substantially completed, it would make less sense for parties to request a replacement arbitrator, who then would have to learn all that had occurred in his absence.

In the event that parties do request a replacement arbitrator, it is clear that the arbitrators have the authority to require the rehearing of part or all of the case, or to withdraw from the case, effectively requiring the appointment of another panel, as is appropriate in their judgement. With this rule change, however, a party may no longer delay the resolution of the dispute by insisting on a rehearing whenever an arbitrator unexpectedly is unable to continue in his hearing of a case.

(e) *Availability of Small Claims Procedures and the Number of Arbitrators Required to Hear a Claim.* The CBOE proposes to amend Rule 18.4(e) to increase to $10,000 from $5,000 the monetary claim limit for cases to be heard under the simplified procedures developed in the Uniform Code. Under these expedited procedures, a single arbitrator decides a case based upon the papers submitted by the parties. No oral hearing is held unless requested by the investor, or ordered by the arbitrator. This change is designed to decrease the costs of arbitration.[9]

CBOE Rule 18.10(a) would change the number of arbitrators generally used for large cases from five to three. The rule currently provides for the appointment of five arbitrators in cases brought by public customers in which the claim exceeds $500,000. In order to alleviate administrative delays and costs frequently encountered in such cases, the proposed rule would eliminate the requirement of five-member panels, allowing the director of arbitration to exercise discretion in appointing panels of no fewer than three and no more than five arbitrators in cases not heard under the CBOE's simplified arbitration procedures.

The CBOE also proposed a technical amendment, in CBOE Rule 18.4(e), regarding the single arbitrators used in cases administered under the simplifed procedures. The amendment codifies the existing practice of appointing a public arbitrator as the single arbitrator in the case.

(f) *Discovery.* The CBOE is proposing significant changes to its arbitration discovery rules, which should assist in the early resolution of discovery disputes and encourage the efficient resolution of cases on their merits. Under current Exchange rules, parties have been expected to exchange documents informally and voluntarily. Parties may also request documents pursuant to subpoena under the existing rules, but these do not have to be produced until the day of the hearing.

The CBOE's proposed discovery rule expands party access to prehearing discovery and provides specific time frames for parties to request information from parties and for responding to such an information request. The rule also establishes a mechanism for prehearing conferences and for arbitrator involvement in prehearing matters where needed. Under the CBOE's proposed rule change arbitrators may also order depositions when appropriate.

Proposed CBOE Rule 18.15(e)(1) continues the policy established under existing rules for parties to cooperate to the fullest exent possible in the voluntary exchange of documents and information. In the event that voluntary exchanges are not sufficient, the rule estalishes a clear framework for document production and information requests.

Proposed CBOE Rule 18.15(e)(2) provides that a party may serve a written request for information or documents twenty days after service of the claim or upon the filing of the answer, whichever is earlier. All parties are to receive copies of the request, and parties are required to endeavor to work out disputes regarding the request between themselves before an objection to the request is filed. Unless the requesting party allows more time, information requests must either be satisfied or objected to within thirty calendar days from the date of service. The party who made an information request has ten days from receipt of the objection to respond to the objection.

Under the proposal, a party whose information request has not been satisfied may request in writing that the director of arbitration refer the matter to a prehearing conference. Parties may also find that there are other matters in addition to unresolved information requests that require the assistance of a prehearing conference. CBOE Rule 18.15(e)(4) provides that the director of arbitration may appoint someone to preside over the prehearing conference. The prehearing conferences could be held either in person or by telephone conference call, and are designed to help the parties to reach agreement on such matters as the exchange of information, exchange or production of documents, identification of witnesses, identification and exchange of hearing documents, stipulations of fact, identification and briefing of contested issues, and any other matter which will expedite the arbitration proceedings.

When a prehearing conference is unable to resolve any of these issues, CBOE Rule 18.15(e)(5) provides for the director of arbitration to appoint a single arbitrator to decide the issues outstanding. The rule allows the arbitrator to issue subpoenas, direct appearances of witnesses, direct the production of documents and depositions, and set deadlines and issue any other ruling which will expedite and the hearing and permit any party to develop fully its case. CBOE Rule 18.15(e)(5) provides that the single arbitrator appointed to decide prehearing matters would be a public arbitrator in those cases where public customers have requested a majority of public arbitrators for their panel.

Other amendments to the prehearing provisions require parties to serve on one another at least ten days prior to the first hearing copies of documents in their possession that they intend to present at the hearing and identify witnesses they intend to present at the hearing. Under proposed CBOE Rule 18.15(e)(3), arbitrators may exclude from the arbitration, documents not exchanged or witnesses not identified at that time. The provision does not extend to documents or witnesses that parties may use for cross-examination or rebuttal. In addition, the CBOE is proposing to amend its rules regarding subpoenas. In CBOE Rule 1815(e)(6), the Exchange proposes to require parties to serve copies of all subpoenas on all parties.

(g) *Preservation of a Record.* The CBOE is amending its arbitration rules to assure that records of arbitration

[9] CBOE Rule 18.4(c) would establish a filing fee of $200 in cases where the amount in controversy is more than $5,000 but does not exceed $10,000.

proceedings are made and preserved. These records are necessary for courts to use in conjunction with any review of the proceedings they may make. CBOE Rule 18.27 would codify a requirement that a verbatim record by stenographic reporter or tape recording be maintained. The rule further provides that, if a party to a proceeding elects to have the record transcribed, the cost of such transcription shall be born by that party unless the arbitrator(s) direct otherwise. If a record is transcribed at the request of a party, the rule requires that a copy shall be provided to the arbitrators.

(h) *Content and Public Availability of Arbitration Awards.* The CBOE's proposed rule for arbitration awards expands both the content and public availability of arbitration awards. Prior to the Commission's May 10, 1989 approval of the amended arbitration rules of the Amex, NASD and NYSE, and prior to the submission of the proposal made in this filing, the only information generally available to the public regarding SRO arbitration cases was the percentage of investors that received some portion of the amount they claimed against their broker-dealer. No data had been previously available with respect to particular arbitrators' awards. The CBOE's proposal affords substantially more public access to the results of this process of dispute resolution.

Proposed CBOE Rule 18.31(e) provides that awards shall contain the names of the parties, a summary of the issues in controversy, the damages and/or other relief requested, the damages and/or other relief awarded, a statement of any other issues resolved, the dates the claim was filed and the award rendered, the number and dates of hearing sessions, the location of the hearing(s), the names of the arbitrators and the signatures of the arbitrators concurring in the award. The awards, including any written opinion voluntarily prepared by the arbitrators, are to be made public, except that the names of customer parties to the arbitration will be excluded pursuant to proposed CBOE Rule 18.31(f) if the customer parties request in writing that their names not be included on the public version of the award.

(i) *Arbitration Fees.* Under proposed CBOE Rule 18.33, the fees that may be assessed by the arbitrators for particular cases have been significantly incresed n order to defray the CBOE's costs of administering its arbitration program.[10] For example, CBOE Rule 18.33(a) proposes that all parties who file claims, such as counterclaims, cross-claims and third party claims, now should be required to pay deposits. Under the existing rules, deposits are required only of original claimants. This significantly increases the potential fees that may be recovered by the Exchange and assessed against a party since arbitrators may assess costs against a single party. Proposed CBOE Rule 18.33(d) would raise to $200 from $100 the minimum deposit for cases where no money damages are claimed. Proposed CBOE Rule 18.33(h) sets a fee for prehearing sessions with an arbitrator of seventy-five percent of hearing session fees.

Proposed CBOE Rule 18.33(c) also clarifies that arbitrators may assess the costs of conducting a hearing against the parties as they deem appropriate. These costs include not only the fees for each session, but all other costs of conducting the hearing contemplated under the rules, such as the costs of transcribing a record, or producing witnesses or documents, and any other cost contemplated by the agreement between the parties or permitted by applicable law.

Finally, the CBOE is proposing to codify its definition of a "hearing session". Under proposed CBOE Rule 18.33(b), a "hearing session" would be a meeting between the parties and arbitrators that lasts less than four hours.

(j) *Predispute Arbitration Clauses.* The CBOE also proposes two rule changes designed through the auspices of SICA to improve disclosure to customers in account opening agreements and to restrict the content of the arbitration clauses. Under the proposed rule change, CBOE Rule 18.35 would require broker-dealers that employ predispute arbitration clauses to place immediately before the clause introductory language that would inform customers that they are waiving their right to seek remedies in court, that arbitration is final, that discovery is generally more limited than in court proceedings, that the award is not required to contain factual findings and legal reasoning, and that the arbitration panel typically will include a minority of arbitrators associated with the securities industry.

Proposed CBOE Rule 18.35 would require that the disclosure language be highlighted four ways. First, large or otherwise distinguishable type must be used. Second, the disclosure language must be set out in outline form so as to be noticeable to readers. Third, a statement, also highlighted, that provides that the agreement contains a predispute arbitration clause, and where that clause is located in the contract, must be inserted into the agreement immediately preceding the signature line. Fourth, a copy of the agrement containing a predispute arbitration clause must be given to the customer, who is to acknowledge receipt of the agreement, either in the agreement itself or in a separate document.

Additionally, proposed CBOE Rule 18.35 prohibits SRO members from having agreements with customers that limit or contradict the rules of any SRO, or limit the ability of a party to file any claim in arbitration or limit the ability of the arbitrators to make any award.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section s6(b) and 15A(b) of the Act, 15 U.S.C. 78f(b), 78o–3(b), which require that national securities exchanges have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, provide for an equitable allocation of fees, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not 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 were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that there is good cause to approve the CBOE's proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the Federal Register.[11] The proposal is substantially identical to the NYSE, NASD and AMEX rule filings that were the subject of the Commission's May 10, 1989 approval order.[12] The NYSE's,

[10] The CBOE has advised the Commission that its costs for administering its arbitration program for the years 1987 and 1988 were $17,000 and $32,500, respectively. It recovered $0 in 1987 and $0 in 1988 through the arbitrators' assessment of fees.

[11] The proposed rule changes to CBOE Rules 18.4, 18.10, 18.11, 18.13, 18.14, 18.27 and 18.33 are effective upon approval. The proposed rule changes to CBOE Rules 18.15 and 18.31 are effective only for cases filed with the CBOE after September 1, 1989. The proposed rule change to CBOE Rule 18.35 will become effective September 7, 1989.

[12] *See* note 1, *supra.*

NASD's and AMEX's versions of the same rules were published for public comment in the **Federal Register**, providing both the public and broker-dealer community with ample opportunity to comment on the proposed rule change that is the subject of this release. All public comments directed at the other SROs' arbitration filings were considered in the context of the review undertaken for the Commission's May 10, 1989 approval order. In light of the Commission's thorough consideration of all comments directed at the SRO arbitration filings that were the subject of the Commission's May 10, 1989 approval order, the substantially identical nature of the CBOE's arbitration proposal, and the benefits that will accrue to investors from the availability of these improved arbitration procedures, the Commission believes that a good cause finding is justified.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(4) and (5) of the Act,[13] which require that national securities exchanges and registered securities associations have rules designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, provide for an equitable allocation of fees, and, in general, protect investors and the public interest.

The Commission believes that the proposed rules appropriately balance the need to strengthen investor confidence in the arbitration systems at the SROs, both by improving the procedures for administering the arbitrations and by creating clear obligations regarding the use of SRO members of predispute arbitration clauses, with the need to maintain arbitration as a form of dispute resolution that provides for equitable and efficient administration of justice. In particular, the rule changes affecting the classification of arbitrators, arbitrator disclosure, discovery, the preservation of a record, the form and public availability of awards, and guidelines for the use of predispute arbitration clauses dynamically advance the public interest in SRO arbitration.[14] Likewise, the SROs' initiatives with respect to the handling of pleadings, appointment of replacement arbitrators, the use of small claims procedures, and the number of arbitrators should improve the efficiency and speed of arbitration, maintaining those bargained for qualities of traditional arbitration. Because these rules will aid in the just resolution of disputes between investors and broker-dealers, we conclude that these rules are designed to prevent fraudulent and manipulative practices, promote just and equitable principles of trade and in general, protect investors and the public interest consistent with section 6(b)(5) of the Act. The fee increases represented by these changes appear to be reasonable and provide for an equitable allocation of fees among SRO members and investors using the arbitration facilities consistent with section 6(b)(4) of the Act.

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 addressing the Proposed Rule Change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be witheld from the public in accordance with 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 the filings and comment letters will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 30, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the above mentioned proposed rule changes be and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Dated: August 2, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18554 Filed 8-8-89; 8:45 am]

BILLING CODE 8010-01-M

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] The Commission's approval of CBOE Rule 18.35, and the comparable rules of the NYSE, NASD and AMEX, is consistent with the conclusion of the Court of Appeals for the Sixth Circuit in *Roney v. Goren*, No. 88-1874 (May 26, 1989), that the Commission has the authority to assure customer choice among SRO arbitration forums.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30-3(a)(12) (1989).

[Rel. No. 34-27092; File No. SR-PHLX-89-21]

Self-Regulatory Organizations; Proposed Rule Change By the Philadelphia Stock Exchange, Inc., Relating to Specialist Privileges in Currency Warrants

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 July 24, 1989, the Philadephia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as desribed in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange") proposes to adopt a policy that would allow an affiliated broker-dealer specialist unit of a corporate issuer of currency warrants ("warrants") to be eligible to become the registered specialist in such warrents listed and eligible for trading on the Exchange pursuant to its previously adopted currency warrent listing standards of PHLX Rule 803. *See* SR-PHLX-87-21.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

While the Exchange, like other regional exchanges, does not have formal isolation and restriction requirements relating to its equity specialists ("Chinese Wall" requirements), the Exchange intends to give heightened scrutiny to the activities of any specialist unit in warrants that is

affiliated with an issuer of such warrants. In this regard, the PHLX intends to evaluate each instance of an affiliated broker-dealer specialist unit of an issuer pursuing registration in warrants to assure compliance with the policies specified below. In each instance, the broker-dealer would have to satisfy the PHLX that it and the issuer of the warrants had received a no-action letter from the Commission, substantially to the effect that Rule 10b–6 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), will not apply to the activities of the broker-dealer's proposed specialist unit prior to or during distributions by an affiliated issuer of additional warrants of the same class or series.

The issuer of the warrants and its affiliated broker-dealer would also have to satisfy PHLX that they have imposed, and have adequate means of enforcing, appropriate Chinese Wall procedures respecting the proposed specialist operations of the broker-dealer. The Exchange considers the imposition of such procedures to be essential to the maintenance of a fair and orderly market in the warrants. In particular, the Exchange believes that the affiliation of an issuer of warrants with a broker-dealer that also acts as specialist in the warrants presents two concerns. First, there is a potential for conflicts of interest if the broker-dealer's customer activities are not adequately isolated from the specialist's activities. Second, although the warrants are expected to trade primarily based on movements in the foreign exchange market and should not react significantly to issuer-specific information, there is a potential for misuse of material non-public information regarding the issuer if access by the specialist unit to that information is not restricted. In view of the seriousness of these concerns, the Exchange will not permit an affiliated broker-dealer to commence its specialist operations in the warrants until the broker-dealer and the issuer have demonstrated to the satisfaction of the Exchange their compliance with the Exchange's Chinese Wall policies.

To effect its policy and to protect against conflicts of interest with the broker-dealer's customers who trade in the warrants, the Exchange intends to review the broker-dealer's policies with respect to information flow between the retail operations of the broker-dealer and its specialist unit. To protect against abuse of material non-public information regarding the issuer of the warrants, the Exchange likewise intends to review the firm's policies regarding the dissemination of such information within the issuer and its affiliates, particularly the proposed specialist unit, such as the existence of an appropriate employee confidentiality policy and other restrictions on dissemination of information.

The Exchange recognizes that the nature of the proposed Chinese Wall procedures may vary. Accordingly, the Exchange intends to review the viability of such procedures on a case-by-case basis. In connection with its review of Chinese Wall procedures, the Exchange will discuss the adequacy of existing procedures with all relevant compliance departments and will give special consideration to the ability of such departments to monitor the agreed upon procedures. The Exchange will also monitor compliance with such procedures during the term of the specialist's operations.

The PHLX has not chosen to require isolation and restriction of the broker-dealer's specialist unit from other affiliated proprietary foreign currency trading operations primarily because it believes that a currency warrant product traded by an affiliated broker-dealer specialist unit of an issuer presents fundamentally different circumstances from those presented by an affiliated broker-dealer specialist unit in a listed or over-the-counter equity option or other type of listed debt issue. The primary difference is the fact that, unlike options on corporate equity and debt issues, the prices of which depend on the current state of the issuer's business, the price of a currency warrant product largely depends on the relationship of the spot and forward foreign currency markets, a relationship that may be tracked over time through the use of any options pricing model. Moreover, the spot and forward foreign exchange markets, as well as the related derivative markets, are deep, liquid and subject to the price disciplines ordinarily associated with mature, integrated cash and forward markets.

Given the size of these markets, the multiplicity of market participants and the mathematical price relationship between the cash and forward markets and the market for the warrants, the ability of any broker-dealer, specialist unit and/or proprietary trading desk (including those of a broker-dealer affiliated with the issuer) to affect even the short term market for the warrants is remote. A barrier between a broker-dealer's specialist and foreign exchange operations would thus have little effect on the secondary market, but would probably make it impracticable for any firm to act as a specialist in the warrants, since the specialist's ability to set appropriate pricing and market trading levels depends on its access to information concerning the behavior of the remainder of the foreign exchange market. Moreover, if it were appropriate to prevent specialist access to such information, then any such restriction would apply to all specialists rather than only those affiliated with the issuer—a proposition that has not, to the knowledge of the Exchange, been implemented or suggested. Although, based on the foregoing, the PHLX does not believe that additional Chinese Wall procedures in this area are necessary, the PHLX committed to utilizing its foreign currency options surveillance program to detect any discrepancies between prevailing spot and forward currency prices related to the warrants and to review promptly any reports of purported market manipulation.

The Commission has asked the Exchange to address whether approval for listing and trading of warrants by an affiliated broker-dealer specialist unit of an issuer would potentially result in an undesired proliferation of such products. As required in SR–PHLX–87–21, listed foreign currency warrants would be obligations of their issuer, registered with the Commission and subject to cash settlement in U.S. dollars during a limited term from their date of issuance. Moreover, the issuer of the warrants must have at least 250,000 warrants outstanding, exclusive of concentrated holdings and those of officers and directors, and at least 500 holders of a class of equity securities which would otherwise be eligible for listing. The warrant issuer must have such assets at the issuance of the warrants so that there is a reasonable expectation that it will have sufficient means to meet its settlement obligations. In this regard, PHLX Rule 803 will be strictly enforced to require that the issuer will have at least $1 million net tangible assets.

The aforementioned listing requirements, to a great extent, will limit the number of potential issuers. The PHLX believes that a limited number of potential issuers would concentrate their currency warrant and related issues in only the most liquid foreign currencies, *i.e.*, the Deutsche Mark, Yen, British Pound, and Swiss Franc. The PHLX anticipates that the market would be characterized by participation of a limited number of sophisticated institutional investors to whom full disclosure respecting the securities and the credit and market risk of dealing with another currency warrant market participant was known. Even if this is not the case, the PHLX has, in any event, agreed that although warrants are

generally classified as equity products, currency warrants will be subject to requirements applicable to options sales practices, including options suitability requirements. *See* SR-PHLX-87-21.

The Commission has also asked the Exchange to address whether approval of a registration of an affiliated broker-dealer specialist unit in warrants of an issuer might pose a problem respecting whether the potential removal or reallocation of warrants from the specialist affiliated with the issuer, for disciplinary or performance grounds, would unduly affect the secondary market for such warrants. The PHLX currently trades a significantly diversified list of products in the financial markets utilized by a wide spectrum of market participants. The Exchange would apply it rules respecting reallocation when, and if, necessary, and would endeavor to secure a registered specialist unit with sufficient capital to commit to the maintenance of fair and orderly markets with consistency and continuity of pricing in the warrants.

The Exchange cannot at this time give any further assurances that the withdrawl of an affiliated broker-dealer specialist unit of an issuer of warrants would not affect the depth and liquidity in the secondary market for such warrants. This is a risk of which market participants are cognizant when they participate in trading activity in securities currently traded by the Exchange on a primary market basis. In this regard, the PHLX believes that as a result of the recent growth and commitment of significant capital resources by an increasing number of broker-dealer member organizations, it would be able to secure a competent replacement registered specialist unit for the warrants should the need so arise.

The proposed rule change is consistent with Section 6(b)(5) of the Exchange Act, which provides, in part, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 30, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 2, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18555 Filed 8-8-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of Hearings

[Docket No. 46424]

International Travel Club; Deceptive Advertising Enforcement Proceeding Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, Department of Transportation, 400 Seventh Street SW., Washington DC 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 89-18563 Filed 8-8-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF VETERANS AFFAIRS

Organizational Structure

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs Act, Pub. L. 100-527, dated October 25, 1988, established the Veterans Administration as the Department of Veterans Affairs, an executive level Department. This notice provides the basic organizational structure and functional assignments of each Assistant Secretary within the Department of Veterans Affairs (VA).

EFFECTIVE DATE: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Lynn H. Covington, Director, Paperwork Management and Regulations Service (73), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3616.

SUPPLEMENTAL INFORMATION: The VA mission is to provide health care and benefits services to veterans and their beneficiaries. As required by 5 U.S.C 552(a)(1), VA is publishing the newly established organizational chart and a list of the functional assignments of each Assistant Secretary.

At a later date, the Department will publish a more detailed version to include descriptions of the Department's organization and activities. The information contained in this Notice supersedes the Notice published July 18, 1986, in the **Federal Register** (51 FR 26094).

APPROVED: August 2, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

The basic functional alignment for the Department of Veterans Affairs is as follows:

Assistant Secretary for Finance and Planning

Budget
- Budget Service
- Resource Planning Service

Financial Management
- Finance Service
- Financial Management
- Financial Systems

Planning & Management Analysis
- Program Planning Coordination
- Quality/Productivity Improvement Programs
- A–76 (Performance of Commercial Activities)
- Statistics & Research
- Management and Policy Studies
- Economic Analysis
- Internal Controls

Assistant Secretary for Information Resources

Information Resources Management
- Systems Planning Policy & Acquisition Control
- Systems Policy, Standards & Integration
- Systems Audit and Security
- Management and Decision Support System
- Paperwork Management
- Reporting Policy and Review Service
- Paperwork and Regulations Service

Information Resources Operations
- Systems Operations
- Customer Support
- Telecommunications

Assistant Secretary for Human Resources and Administration

Personnel & Labor Relations
- Personnel
- Labor Relations
- Training & Executive Development
- Designated Agency Safety & Health Official

Equal Employment Opportunity

Administration
- Central Office Support Service
- VA Central Office Building Management
- VA Central Office Layout Functions
- Publications/Forms Design Functions
- Audio Visuals
- Emergency Preparedness/VA Central Office Security
- Travel Policy

Assistant Secretary for Veterans Liaison and Program Coordination

Veterans Liaison
- Special Events Coordination
- Special Interest Group Liaison
- Veterans Service Organizations Liaison
- Intergovernmental Affairs
- Consumer Affairs

Program Coordination and Evaluation
- Special Issue Coordination
- Advisory Committee Coordination
- Program Evaluation
- Management Efficiency Pilot Project

Assistant Secretary for Acquisition and Facilities

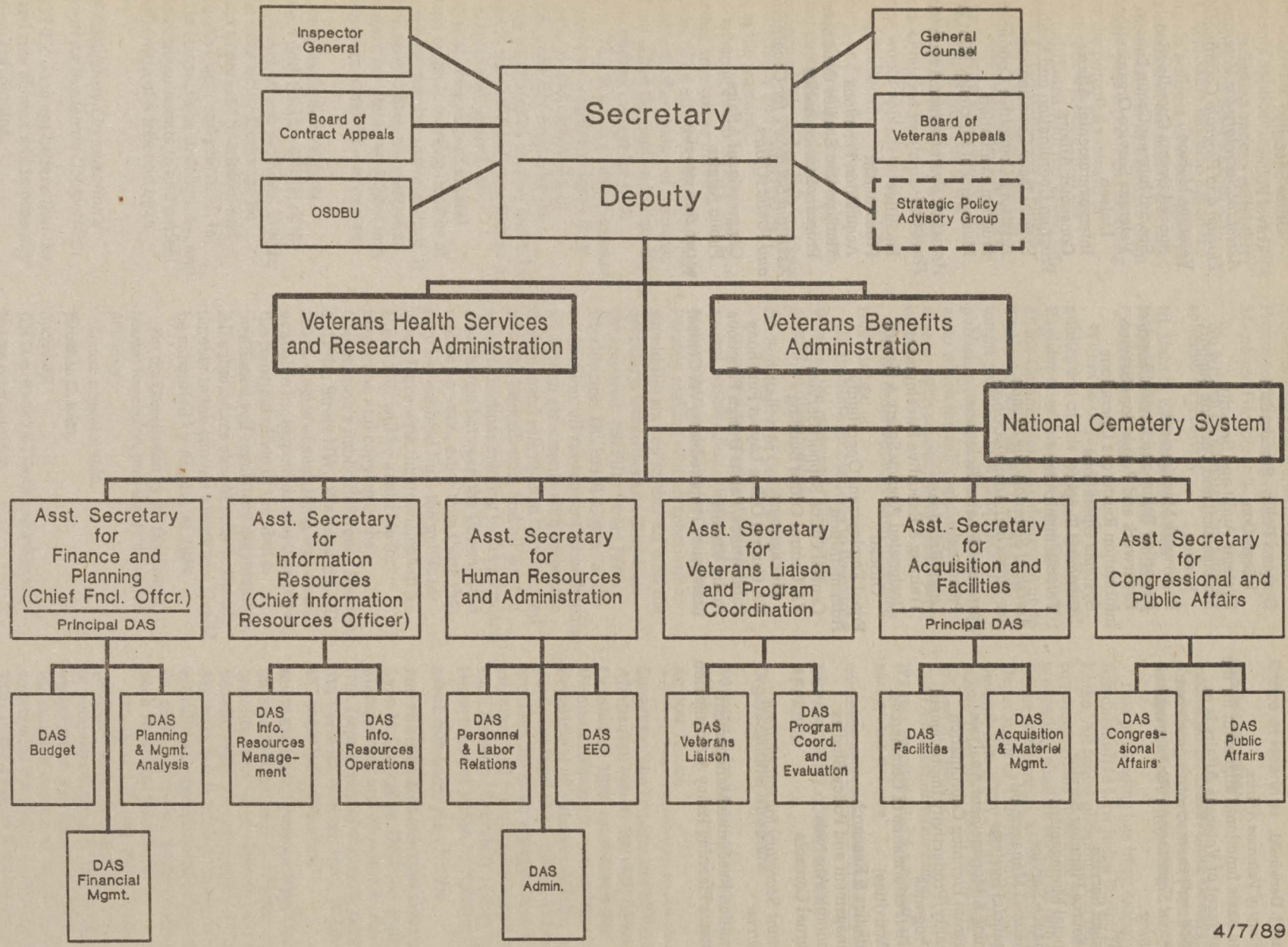
- Facilities
- Procurement
- Acquisition Functions
- Management Studies Contracts
- Program Service Audits

Assistant Secretary for Congressional and Public Affairs

- Congressional Affairs
- Public Affairs

BILLING CODE 8320-01-M

Organizational Structure
Department of Veterans Affairs



[FR Doc. 89-18642 Filed 8-8-89; 8:45 am]
BILLING CODE 8320-01-C

Sunshine Act Meetings

Federal Register
Vol. 54, No. 152
Wednesday, August 9, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m. August 21, 1989.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of last meeting.
2. Thrift Savings Plan activities report by the Executive Director.
3. Quarterly review of investment performance.

CONTACT PERSON FOR MORE INFORMATION Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: August 7, 1989.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 89–18741 Filed 8–7–89; 1:43 pm]

BILLING CODE 6760–01–M

Corrections

Federal Register
Vol. 54, No. 152
Wednesday, August 9, 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 HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement 940]

Assistance Program for Chronic Disease Prevention and Control

Correction

In notice document 89-17532 beginning on page 31250 in the issue of Thursday, July 27, 1989, make the following corrections:

1. On page 31253, at the bottom of the first column, subparagraph "(8)"should be designated "(9)", and subparagraph (8) should be inserted to read "(8) Clear delineation of CDC versus State responsibilities."

2. On the same page, in the second column, paragraph "2." should be designated "3.", and paragraph 2. should be inserted to read "2. Consistency of the application with the stated programmatic interests of the program announcement. (15%)"

3. On page 31254, in the first column, in the second line, "NW."should read "NE.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

RIN 1515-AA71

Administrative Procedures

Correction

In rule document 89-17601 beginning on page 31511 in the issue of Monday, July 31, 1989, make the following correction:

On page 31513, in the second column, immediately preceeding the subheading *Summary*, the heading should read "Delaying the Effective Date of Certain Rulings"

BILLING CODE 1505-01-D

federal register

Wednesday
August 9, 1989

Part II

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Proposed Rule and Notice

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-88-101]

Energy Conservation Program for Consumer Products: Proposed Rulemaking and Public Hearing Regarding Energy Conservation Standards for Three Types of Consumer Products

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Proposed rule and public hearing.

SUMMARY: The Energy Policy and Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act (NECPA), the National Appliance Energy Conservation Act (NAECA) and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE) to administer an energy conservation program for these products. Among other things, NAECA requires DOE to consider amending the energy conservation standards for dishwashers, clothes washers, and clothes dryers.

EPCA, as amended, prescribed standards for dishwashers, clothes washers and clothes dryers, effective January 1, 1988. In accordance with NAECA, the Department has reviewed amendments to the prescribed standards. As a result of its review, DOE proposes that revised standards for dishwashers, clothes washers and clothes dryers would result in a significant conservation of energy and would be economically justified.

For clothes washers, the Department is not proposing a specific level within the range considered; rather, DOE is soliciting comments and information from the public to be considered in promulgating the final rule, which will specify a specific level for clothes washers; the level selected could include no change to the standard level prescribed by NAECA.

For dishwashers, the Department is proposing a minimum energy efficiency standard.

For clothes dryers, the Department is proposing a prescriptive standard that would require clothes dryers to be equipped with an automatic termination device, either a moisture termination or temperature termination device.

The purpose of this notice of proposed rulemaking is to provide interested persons an opportunity to comment on the proposed rule, and to invite interested persons to participate in the appliance energy conservation standards rulemaking process.

DATES: Written comments on the proposed rule must be received by the Department by October 10, 1989.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, on September 20, 1989. Requests to speak at the hearing must be received by the Department no later than 4:00 p.m., September 18, 1989.

The hearing will begin at 9:30 a.m., on September 20, 1989.

The length of each presentation is limited to 20 minutes.

ADDRESSES: Written comments, oral statements, requests to speak at the hearing and requests for speaker lists are to be submitted to U.S. Department of Energy, Office of Conservation and Renewable Energy, CE-43.1.

Hearings and Dockets, Energy Conservation Program for Consumer Products, Docket No. CE-RM-88-101, Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9320.

The hearing will be held at the U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue, SW., Washington, DC.

Copies of the transcript of the public hearing and public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see section V, "Public Comment Procedures," of this notice.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

U.S. Department of Energy, CE-43.1, Docket No. CE-RM-88-101, Forrestal Building, Room 6B-025, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9320.

SUPPLEMENTARY INFORMATION:

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a. Authority
b. Background

II. General Discussion

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b. Technological Feasibility
1. General
2. Maximum Technologically Feasible Levels
c. Energy Savings
1. Determination of Savings
2. Significance of Savings
d. Rebuttable Presumption
e. Economic Justification
1. Economic Impact on Manufacturers and Consumers
2. Life-Cycle Costs
3. Energy Savings
4. Lessening of Utility of Performance of Products
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b. Clothes Washers
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1. Classes
2. Design Options
3. Comments on the Advance Notice of Proposed Rulemaking
4. Efficiency Levels Analyzed

IV. Environmental, Regulatory Impact, Takings Assessment, Federalism and Regulatory Flexibility Reviews

a. Environmental Review
b. Regulatory Impact Review
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d. Federalism Review
e. Regulatory Flexibility Review

V. Public Comment Procedures

a. Participation in Rulemaking
b. Written Comment Procedures
c. Public Hearing
d. Issues Requested for Comment

I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, by the National Appliance Energy Conservation Act (NAECA), Pub. L. 100-12, and by the National Appliance Energy

Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357,[1] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as "covered products") are: refrigerators, refrigerator-freezers and freezers; dishwashers; clothes dryers; water heaters; central air conditioners and central air conditioning heat pumps; furnaces; direct heating equipment; television sets; kitchen ranges and ovens; clothes washers; room air conditioners; fluorescent lamp ballasts; and pool heaters; as well as any other consumer product classified by the Secretary of Energy. Section 322. To date, the Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts: testing, labeling, and mandatory energy conservation standards. The Department of Energy (DOE or Department), in consultation with the National Institute of Standards and Technology (NIST), is required to amend or establish new test procedures as appropriate for each of the covered products. Section 323. The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products. Section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323(d)(1). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may represent the energy consumption of, or the cost of energy consumed by the product except as reflected in a test conducted according to the DOE test procedure. Section 323(c)(2).

The Federal Trade Commission (FTC) is required by the Act to prescribe rules governing the labeling of covered products for which test procedures have been prescribed by DOE. Section 324(a). These rules are to require that each particular model of a covered product bear a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). Disclosure of estimated operating cost is not required under section 324 if the FTC determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. In such a case, FTC must require a different useful measure of energy consumption. Section 324(c). At the present time there are FTC rules requiring labels for the following products: room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, refrigerators and refrigerator-freezers, and central air conditioners. 44 FR 66475, November 19, 1979, and 52 FR 46888, December 10, 1987.

For each of 12 of the covered products, the Act prescribes an initial Federal energy conservation standard. Section 325 (b)–(h). The Act establishes effective dates for the standards in 1988, 1990, 1992 or 1993, depending on the product, and specifies that the standards are to be reviewed by the Department within three to ten years, also depending on the product. Section 325 (b)–(h). After the specified three- to ten-year period, DOE may promulgate new standards for each product; however, the Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product. Section 325(1)(1). The Department's current review of standards is for dishwashers, clothes washers, and clothes dryers.

Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(1)(2)(A).

Section 325(1)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit comments on a proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of the covered products which are likely to result directly from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

In addition, the Act specifies criteria for petitions to DOE in regard to amendments to standards. Section 325(k). Under the Act, any person may petition the Department to conduct a rulemaking to amend a Federal energy conservation standard for any covered product. Section 325(k)(1). The Department must grant such a petition if it determines that an amended standard will result in significant conservation of energy, is technologically feasible and is cost-effective. Section 325(k)(2).

Sections 325(k)(3) (A) and (B) stipulate that in no case may an amended standard apply to products manufactured within three years or five years, depending on the product, after publication of the final rule establishing a standard.

Prior to proposing a new or amended standard, DOE is required to publish an advance notice of proposed rulemaking which specifies the type (or class) of covered product to which the rule may apply and which provides a 60-day period during which interested persons may submit written comments. Section 325(m)(1) (A) and (B).

Section 326 of the Act authorizes the Secretary to require manufacturers to submit information or reports to assure that each covered product to which a standard applies meets the required energy efficiency level. The Act also specifies that in determining information requirements, DOE consider existing sources of information, including nationally recognized trade association certification programs. Section 326(d).

Enforcement-related provisions of the Act provide for: (1) DOE to prescribe rules requiring manufacturers to allow the Department to observe testing and inspect results of testing conducted by the manufacturer (section 326(b)(5)); (2) manufacturers to supply to DOE a reasonable number of products for testing purposes (section 326(b)(3)); (3) manufacturers to submit information or reports necessary to ensure compliance (section 326(d)); and (4) injunctive relief against any prohibited act, including distribution of noncomplying products (section 334).

[1] Part B of Title III of EPCA, as amended by NECPA, NAECA, and NAECA 1988, is referred to in this notice as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 et seq. Part B of Title III of EPCA, as amended by NECPA only, is referred to in this notice as NECPA.

b. Background

NECPA required DOE to establish mandatory energy efficiency standards for each of 13 covered products.[2] These standards were to be designed to achieve the maximum improvement in energy efficiency that was technologically feasible and economically justified.

NECPA provided, however, that no standard for a product be established if there were no test procedure for the product, or if DOE determined by rule either that a standard would not result in significant conservation of energy, or that a standard was not technologically feasible or economically justified. In determining whether a standard was economically justified, the Department was directed to determine whether the benefits of the standard exceeded its burdens by weighing the seven factors discussed above.

NECPA specified the priorities and procedures to be followed in adopting efficiency standards. Nine of the 13 covered products were given priority. These nine products were: refrigerators and refrigerator-freezers; freezers; clothes dryers; water heaters; room air conditioners; home heating equipment not including furnaces; kitchen ranges and ovens; central air conditioners; and furnaces.

The Department published an advance notice of proposed rulemaking for the nine priority products on January 2, 1979. 44 FR 20. On December 13, 1979, DOE published an advance notice of proposed rulemaking for dishwashers; television sets; clothes washers; and humidifiers and dehumidifiers. 44 FR 72276. An advance notice for central air conditioners (heat pumps) was published on January 23, 1980. 45 FR 5602.

After receiving comments on the January 2, 1979, advance notice, DOE published, on June 30, 1980, its first proposed rulemaking for the nine products. 45 FR 43976. (Hereafter referred to as the June 1980 proposal.) This NOPR set forth DOE's proposal concerning energy efficiency standards for the covered products. It also proposed comprehensive requirements for certification and enforcement of the standards, procedures for processing petitions by States that sought exemption for regulations subject to the general preemption requirements of NECPA, and small business exemptions.

On April 2, 1982, DOE issued a further notice of proposed rulemaking with respect to the nine priority products. 47 FR 14424. (Hereafter referred to as the April 1982 proposal). With respect to eight of the products, DOE proposed to make a determination that a standard would not result in significant conservation of energy and would not be economically justified.[3] The April 1982 proposal also proposed rules governing petitions to DOE both by States to obtain exemption from preemption of State or local energy efficiency standards, as well as by manufacturers to obtain preemption of State or local standards.

On December 22, 1982, DOE published a final rule in which the Department determined that efficiency standards were not warranted for clothes dryers and kitchen ranges and ovens. 47 FR 57198. (Hereafter referred to as the December 1982 final rule.) At that time, DOE also adopted final procedures by which States might obtain exemption for State or local efficiency standards from Federal preemption, and by which manufacturers might obtain preemption of a State or local standard not otherwise preempted.

On August 30, 1983, DOE published a final rule with respect to the remaining six covered products: refrigerators and refrigerator-freezers, freezers, water heaters, furnaces, room air conditioners and central air conditioners. 48 FR 39376. (Hereafter referred to as the August 1983 final rule.) For each of the six products covered by the August 1983 final rule, except central air conditioners, DOE determined that an energy efficiency standard would not result in significant conservation of energy and would not be economically justified. With respect to central air conditioners, DOE found that an energy efficiency standard would result in significant conservation of energy, but would not be economically justified.

On April 1, 1985, DOE published a proposed rule with respect to four covered products: dishwashers, television sets, clothes washers and humidifiers and dehumidifiers. 50 FR 12966. (Hereafter referred to as the April 1985 proposal). For each of the four products covered by the April 1985 proposal, DOE proposed that an energy efficiency standard would not be economically justified and would not result in a significant conservation of energy.

During 1983, DOE's December 1982 and August 1983 final rules were challenged in a lawsuit brought by the Natural Resources Defense Council (NRDC) and others against the Department. On July 16, 1985, the U.S. Court of Appeals set aside DOE's December 1982 and August 1983 final rules. *NRDC* v. *Herrington*, 768 F.2d 1355 (D.C. Cir. 1985).

Consequently, on March 5, 1986, DOE published notices in the **Federal Register** removing the December 1982 and August 1983 final rules and withdrawing the April 1985 proposal. 51 FR 7549 and 51 FR 7582.

The National Appliance Energy Conservation Act, which became law on March 17, 1987, amended EPCA in part by: redefining "covered products" (specifically, refrigerators, refrigerator-freezers, and freezers were combined into one product type from two; humidifiers and dehumidifiers were deleted; and pool heaters were added); establishing Federal energy conservation standards for 11 of the 12 covered products; and creating a schedule, according to which each standard is to be reviewed to determine if an amended standard is required.

The National Appliance Energy Conservation Amendments of 1988, which became law on June 28, 1988, established Federal energy conservation standards for fluorescent lamp ballasts. These amendments also created a review schedule for DOE to determine if an amended standard for fluorescent lamp ballasts is required.

As directed by the Act, DOE published an advance notice of proposed rulemaking, with a 60-day comment period that ended July 18, 1988. 53 FR 17712, May 18, 1988. (Hereafter referred to as the advance notice). The advance notice presented the product classes that DOE planned to analyze, and provided a detailed discussion of the analytical methodology and analytical models that the Department expected to use in performing the analysis to support this rulemaking. The Department invited comments and data on the accuracy and feasibility of the planned methodology and encouraged interested persons to recommend improvements or alternatives to DOE's approach. The comments in response to the advance notice are addressed in sections II and III of this notice.

II. General Discussion

As stated above, NAECA requires DOE to determine if the legislated

[2] The consumer products covered by NECPA include: refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces.

[3] The April 1982 proposal did not propose any rule with respect to the product type "home heating equipment, not including furnaces," or with respect to that class of the product water heaters made up of heat pump water heaters, or with respect to those classes of the product central air conditioners that are heat pumps.

standards for dishwashers, clothes washers, and clothes dryers should be amended.

The Act prohibits DOE from promulgating a standard for a product if: (1) There is no test procedure for the product (except in the case of clothes washers, clothes dryers, dishwashers, and kitchen ranges and ovens), (2) a standard is not technologically feasible, (3) DOE determines that a standard would not be economically justified, (4) if a standard would not result in a significant conservation of energy or (5) if the Secretary has made a finding that such a standard will likely result in the unavailability of currently available performance characteristics. To measure possible energy savings and economic justification, DOE analyzed several possible standard levels for each product type. Furthermore, the Act stipulates that any adjustment of a standard may only be toward more stringent levels. With respect to each appliance, DOE analyzed various specific design options, including prototypes. A prototype can be either an individual component, e.g., an improved food filter, or a complete assembly with the design option installed, e.g., heat pump clothes dryers. While a prototype design may be technologically feasible as an individual component or as part of a bread-board [4] assembly, it does not necessarily follow that techniques have been developed for mass production of the prototype design.

a. Test Procedures

For each product discussed in today's proposed rulemaking there is an applicable DOE test procedure to evaluate its energy efficiency.

b. Technological Feasibility

1. *General.* For those products and classes of products discussed in today's notice, DOE believes that the efficiency levels analyzed, while not necessarily in production, are technologically possible. The technological feasibility of the design options is addressed in the product specific discussion. DOE's criteria for evaluating design options for technological feasibility are that the design options are already in use by the respective industry or that research has progressed to the likely development of a prototype.

One comment on the advance notice addressed the subject of technological feasibility. Whirlpool Corporation (Whirlpool) contended that a design option is not technologically feasible unless it is acceptable to the consumer and commercially workable. (Whirlpool, No. 1, at 17).[5] DOE considers a design option to be technologically feasible, if, based on the Department's analysis, DOE believes it is capable of being carried out.

2. *Maximum Technologically Feasible Levels.* The Act requires that in considering any new or amended standards, the Department must consider those that "shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." (Section 325 (1)(2)(A)). Accordingly, for each class of product under consideration in this rulemaking, a maximum technologically feasible design option was identified. This is the most efficient model of a class for which at least a prototype exists. In comments on the advance notice, Whirlpool and the Association of Home Appliance Manufacturers (AHAM) stated that any determination of maximum technological feasibility include only those options that are "commercially workable." (AHAM, No. 5 at 7; Whirlpool, No. 1, at 17). While the Department will consider the commercial workability "of a maximum technologically feasible" design in the economic justification analysis, such a consideration is not relevant in determining the maximum technologically feasible design, which is largely an engineering determination. DOE considers a design option to be technologically feasible, if, based on the Department's analysis, DOE believes it is capable of being carried out.

A complete discussion of each maximum technologically feasible level, and the design options included in each, is found in the Engineering Analysis. *See* Technical Support Document, Chapter 3, specifically sections 3.2.5, 3.3.5, and 3.4.5. These are presented in Table 2–1, below.

TABLE 2–1—MAXIMUM TECHNOLOGICALLY FEASIBLE LEVELS

Products and product classes	Unit energy consumption
Dishwashers:	
Compact, 115V	525 kWh/yr.
Standard, 115V	742 kWh/yr.
Standard water heating, 115V	704.5 kWh/yr.
Clothes washers:	
Top loading, compact [1]	576 kWh/yr.
Top loading, standard capacity [2]	743 kWh/yr.
Top loading, large capacity [3]	1,010 kWh/yr.
Clothes dryers:	
Compact, electric, 110V [4]	347 kWh/yr.
Compact, electric, 240V [4]	384 kWh/yr.
Standard electric [5]	859 kWh/yr.
Electric heat pump [5]	336 kWh/yr.
Gas [5]	Standard 3.27/MMBtu/yr.

kWh/yr. = kilowatt hours per year
MMBtu/yr. = million British thermal units per year.

[1] Capacity equals 1.45 ft.^{3}
[2] Capacity equals 2.4 ft.^{3}
[3] Capacity equals 3.0 ft.^{3}
[4] Capacity equals 3.45 ft.^{3}
[5] Capacity equals 5.9 ft.^{3}

DOE proposes that the maximum technologically feasible level is one that can be carried out by the addition of design options, both commercially feasible and prototypes, to the baseline units without affecting the product's utility. DOE believes that there are no products available with the same utility and capacity that are more efficient than the maximum technological level.

Each maximum technologically feasible level was evaluated to determine if it would be economically justified at the time of the effective date of the standard. Standards that have unacceptable impacts on consumers or manufacturers or result in the changing of the utility of the product were rejected.

DOE provided lists of design options for the engineering analysis in the advance notice. The comments on these design options resulted in more detailed design options for DOE review. DOE has considered these suggestions and has addressed them in the product specific discussions in this notice.

The analysis process is described fully in the Technical Support Document. Computer models and manufacturers' data were used to predict improvements in product efficiencies and the costs associated with these improvements.

The Engineering Analysis addresses two statutory requirements. The first requirement is the Department's evaluation of the maximum improvements in energy efficiency that are technologically feasible. The second requirement relates to the lessening of utility to the consumer of any of the covered products due to the imposition of standards. The Engineering Analysis also provides information on efficiencies and manufacturing costs to other sections of the overall analysis. The product specific sections of this notice

[4] A bread-board unit is an experimental arrangement of the design made to test its feasibility.

[5] Comments on the advance notice have been assigned docket numbers and have been numbered consecutively.

include the method of analysis for each product.

c. Energy Savings

1. *Determination of Savings.* The Department forecasts energy consumption through the use of the Lawrence Berkeley Laboratory Residential Energy Model (LBL–REM). The LBL–REM forecasts energy consumption over the period of analysis for candidate standards and the base case.[6] The Department quantified the energy savings that would be attributable to a standard as the difference in energy consumption between the candidate standard's case and the base case.

The LBL–REM is an improvement of the Oak Ridge National Laboratory Residential Energy End Use Model (ORNL Model), which was used by DOE in previous standards rulemakings. The LBL–REM is fully explained in the Technical Support Document. Appendix B to that document addresses the LBL–REM in detail. The LBL–REM contains algorithms to project average efficiencies, usage behavior, and market shares for each product.

The market share calculations contains the following steps: potential purchasers may purchase any competing technology within an end-use, or none. For clothes washers and dishwashers, the decision to purchase or not is modeled, and the fraction of the total that chooses each class, e.g., standard 115V, standard water heating 115V, etc., is specified exogenously. For clothes dryers, the decision to purchase or not and the choice of fuel is modeled, and the fraction of the total that chooses each class is specified exogenously. Long-term market share elasticities have been assumed with respect to equipment price, operating expense, and income. The effects of standards are expected to be lower operating expense and higher equipment price. The percentage changes in these quantities are used, together with the elasticities, to determine changes in market share resulting from standards. Higher equipment prices will decrease market shares, while lower operating expenses will increase market shares. The net result depends on the standard level selected, and associated equipment prices and operating expenses.

The LBL–REM is used to project residential energy use over the relevant time periods for these three products with and without amended standards. By comparing the energy consumption projection at alternative standard levels, or NAECA's 1988 standards, the Department estimated the amount of energy projected to be saved during the period 1993–2015.[7] The energy saved is expressed in Quads, i.e., quadrillion Btu's. With respect to electricity, the savings are quads of source or primary energy, which is the energy necessary to generate and transmit electricity. The Act defines "energy use" as the quantity of energy directly consumed by a consumer product at point of use. This is generally called "site" energy, as opposed to "source" energy. There are major differences between these types of energy. In 1987, the amount of electrical energy consumed at the site was less than one-third of the amount of source energy that was required to generate and transmit the site electrical energy.[8] Therefore, it is important to identify whether the electricity involved is site or source energy.

The LBL–REM projections are dependent on many assumptions. Among the most important are responsiveness of household appliance purchases to changes in energy prices and consumer income, future energy prices, future levels of housing construction, and options that exist for improving the energy efficiency of appliances. As is the case with any complicated computer model simulation, the validity of the outputs is critically dependent on the inputs.

Comments that DOE received questioned several of the assumptions that were described in the advance notice. These included the following:

Rebound Effect

In the analysis, the Department assumed that greater efficiency in these three product types would not cause them to be used more intensively because of the efficiency improvements. Therefore, in estimating energy savings from different standard levels for dishwashers, clothes washers, and clothes dryers, the Department did not use a rebound effect. The Department has no data indicating that changes in either energy prices or efficiency will cause consumers to use these products any differently.

Discount Rate

The Natural Resources Defense Council (NRDC) questioned the Department's use of consumer discount rates for calculating the cost of conserved energy and suggested, instead, that DOE use a discount rate that is based on "real financial markets." (NRDC, No. 3, at 9). The Department agrees, and notes that the discount rate that was used in this and earlier rulemakings (seven percent) is based on "real financial markets." [9]

Since a dollar in the future is worth less than a dollar today, that future dollar must be discounted to determine its value today. If the discount rate chosen is too high, the present value of future dollars will be understated. Thus, higher discount rates tend to preclude more capital-intensive candidate standard levels. Nevertheless, the Department does not believe that the seven percent rate that was used in the analysis is artificially high. From the business perspective, a reasonable discount rate would be one that represented the private opportunity cost of capital used to meet any appliance conservation standard. A gauge of the private opportunity cost of capital is the most profitable alternative use of that capital. One measure of that cost could be the prime rate, that is, the interest rate that is offered by lending institutions to their most credit-worthy customers. In early March 1989, the prime rate was 11.5 percent. If such a business secured a loan at one of those rates of interest, and repaid it in the 1990–1995 time period, the real rate of interest would be 6.5 percent. This results because the expected annual rate of price increases in that time period is approximately five percent. Most businesses, however, are not eligible for loans at the prime rate of interest, so the estimated real rate of interest for these firms would probably be slightly higher.

Similarly, from the consumer perspective, one approach to selecting an appropriate discount rate is to look at the interest payable on a consumer loan and depreciate that interest by the inflation rate. If a consumer secures a loan at 12 percent interest, and repays it in the 1990–1995 time period, the real rate of interest will be seven percent. Thus, DOE believes that from both the business and consumer perspectives, a

[6] The base case for these three products represents NAECA's 1988 standards, which are design standards only.

[7] LBL–REM was programmed to analyze a single standard level or alternative levels, over the entire period. That is, the fact that a standard might be revised during subsequent rulemakings was not considered by the model. The Department believes that it is not possible to predict what result such reviews may have, and therefore it would be speculative to model any particular result. Therefore, for purposes of this rulemaking, each standard level that was analyzed was projected to have been in place from the time of implementation to the year 2015.

[8] Energy Information Administration, *Electric Power Annual 1987*, Tables 25 and 82, DOE/EIA–0348(87), 1987.

[9] DOE in the calculation of life-cycle cost and net present value, discounted the value of energy; the Department did not discount other measures, e.g., energy and emissions.

seven percent discount rate is reasonable.

On the other hand, it may not be reasonable to require consumers to make an investment where there are inherent risks. For example, if consumers perceive a risk because of the uncertainty of energy prices and reliability and longevity of the equipment, they would require a greater return on their investment, i.e., a higher discount rate. It has been argued that the discount rate should be as high as 15 percent. Dubin and McFadden, "An Econometric Analysis of Residential Electric Appliance Holdings and Consumption," *Econometrica* March 1984, pp. 345–361. DOE requests comments on the approach taken to select an appropriate discount rate, alternative approaches, and the consumer and business risks to be considered.

Several of the inputs, e.g., energy and equipment prices, were tested in sensitivity analyses to determine the effects of varying certain assumptions on the results of the analysis. By such sensitivity analyses, it is possible to determine those inputs where changes, including possible errors, are meaningful to the model's output, and those inputs for which changes are not meaningful. *See* Technical Support Document, §§ 4.3 and 5.4.

The savings attributable to the different standard levels are identified for each product in section III of this notice.

Modeling

Several comments offered suggestions on the LBL–REM modeling efforts. NYSEO critiqued the use of "old data" in LBL–REM in developing the baseline units for analysis, and contended that use of such old data could underestimate the impact that increased efficiency standards could have on saving energy. (NYSEO, No. 2 at 3).

While historical data were used as a starting point for the analysis of these three product types, all of the data bases were updated to reflect current prices and levels of efficiency in the marketplace. These data were then used to calculate annual energy consumption for the LBL–REM and life-cycle cost (LCC) analyses. For example, in the LCC analysis, DOE used both the cycles of operation and the more recent, 1986, Proctor and Gamble (Part 5) data to calculate the life-cycle cost. This calculation does not account for variability in consumer usage patterns, nor does it reflect any changes in typical consumer usage behavior since the test procedures were developed. While the adoption of out-of-date usage values may affect the results of the LBL–REM and LCC analysis, DOE is not certain to what extent the results would be affected since, for example, the energy savings and net present value calculation of the LBL–REM would use the dated usage values in both the base case and standards case.

It is important to note out the difference between "baseline unit" and "base case." In the engineering analysis, the baseline unit for each product class under consideration is identified. These are units that are representative of units that are expected to be offered for sale in the beginning year of the analysis.[10]

Baseline refers only to the engineering analysis and is the first point identified in each cost-efficiency curve. It is the product to which design options are added to create more efficient units. On the other hand, "base case" refers to the economic analysis forecast with only those standards mandated by the Act.

Two comments raised issues about the Department's modeling of utility impacts. First, NYSEO suggested that utility impacts be analyzed for smaller areas in order to capture better the differences among individual power pools. (NYSEO, No. 2, at 9). While the Department agrees with this point in principle, data limitations prevent the implementation of this suggestion.

NYSEO also stated that inclusion of all planned generating facilities as available capacity is inappropriate. (NYSEO, No. 2, at 9–10). The Department notes that the National Electricity Reliability Council (NERC) forecast assumed that certain power plants, e.g., Shoreham and Seabrook, will operate, even though these plants may be delayed, cancelled, or shut down. The Department's estimate of capacity benefits is conservative, because cancelling these plants would increase the reliability benefits of the appliance standards.

On another point, NYSEO contended that the Department underestimates reliability benefits when adequate reserve margins have been forecasted. (NYSEO, No. 2, at 10). The Department believes that such benefits could be estimated for individual utilities, but is unable to do so for larger regions.

NSPC also contended that use of a combustion turbine, which is typically a peak-load generator, in estimating the capacity impact measures of baseload appliances undervalues the cost of new generating capacity. (NSPC, Id.). While there are several alternative methods for valuing capacity impacts, the Department's utility analysis is one that has been adopted by many utilities. For more detailed explanations of, and justification for, the valuation of capacity impacts, *see* Technical Support Document, chapter 8 and Appendix D.

2. *Significance of Savings.* Under section 325(1)(3)(B) of the Act, the Department is prohibited from adopting a standard for a product if that standard would not result in significant energy savings. While the term "significant" has never been defined precisely in the Act, the Department believes that a standard level option need not meet a threshold level of energy savings to be considered a significant saver of energy. The U.S. Court of Appeals, *NRDC* v. *Herrington, supra,* concluded that Congressional intent in using the word "significant" was to mean "non-trivial." *Id.* at 30. Thus, DOE believes that each candidate standard considered results in significant energy savings.

d. Rebuttable Presumption

NAECA established new criteria for determining whether a standard level is economically justified. Section 325(1)(2)(B)(iii) states:

> If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a stamdard is economically justified.

DOE believes this provision means that if the added price of an appliance, caused by a conservation standard, would repay itself to the consumer in energy savings in less than three years, then it can be presumed that such standard is economically justified.[11] This presumption of economic justification can be rebutted by the seven factors of economic justification.

[10] The baseline units are those with estimated average shipment-weighted energy factors (SWEF's) in 1987. The baseline clothes dryer efficiencies are estimated from very limited data, while the efficiencies for dishwashers and clothes dryers are estimated from more extensive data which was available because these products are covered by the FTC labeling program.

[11] For this calculation, the Department calculated cost-of-operation based on the DOE test procedures. Therefore, the consumer is assumed to be an "average" consumer as defined by the DOE test procedures. Consumers that use the products less than the test procedure assumes will experience a longer payback while those that use them more than the test procedure assumes will have a shorter payback.

e. Economic Justification

As noted earlier, section 325(1)(2)(B)(i) of the Act provides seven factors to be evaluated in determining whether a conservation standard is economically justified.

The Association of Home Appliance Manufacturers (AHAM) proposed a methodology that the Department could use in evaluating candidate standard amendments. (AHAM, No. 5, at 11–12). Except for its proposal that the maximum technologically feasible design options be chosen only from those that are "commercially workable," the Department's planned methodology is consistent with the AHAM's proposal.

NRDC suggested that the Department rank design options in ascending order of cost of conserved energy. (NRDC, No. 3, at 9). The Department, with one exception, clothes dry automatic termination, has ranked the design options in ascending order of incremental payback period; this is equivalent to NRDC's suggestion.

NRDC also suggested that any water savings that could result from amended standards be included in the cost-effectiveness, environmental, and economic impact analyses. (NRDC, No. 3, at 8). The Department has included estimates not only of the potential water savings for amended standards, but also of the foregone water disposal expenses that such water savings would cause.

1. *Economic Impact on Manufacturers and Consumers.* The engineering analysis identified improvements in efficiency along with the associated costs to manufacturers for each class of product. For each design option, these costs constitute the increased per unit cost to manufacturers to achieve the indicated energy efficiency levels. Manufacturer, wholesaler, and retailer markups will result in a consumer purchase price higher than the manufacturer cost.

To assess the likely impacts of standards on manufacturers, the Department used a computer model that simulated hypothetical firms in the three industries under consideration. This model, the Lawrence Berkeley Laboratory Manufacturer Impact Model (LBL–MIM), is explained fully in the Technical Support Document. LBL–MIM provides a broad array of outputs, including shipments, price, revenue, net income, and return-on-equity (ROE). An "Output Table" lists values for all these outputs in the base case and in each of the standards cases under consideration. It also gives a range for each of these estimates. A "Sensitivity Chart" shows how ROE would be affected by a change in any one of the model's nine control variables.

For consumers, a measure of economic impact is the life-cycle cost of a product, because it accounts for the increased first price, any increased maintenance expenses, and the reduced fuel expenses resulting from the product's greater efficiency. Under section 325 of the Act, life-cycle cost analysis is a separate factor to be considered in determining economic justification.

2. *Life-Cycle Costs (LCC).* One measure of the effect of proposed standards on consumers is the change in operating expense as compared to the change in purchase price, both resulting from standards. This is quantified by the difference in life-cycle cost (LCC) between the base and standards case for the appliance classes analyzed. The LCC is the sum of the purchase price and the operating expense, including maintenance expenditures, discounted over the lifetime of the appliance.

The LCC is calculated at the estimated average efficiency for each class in the year standards are imposed using consumer discount rates of five, seven, and 10 percent. The purchase price is based on the factory costs in the Engineering Analysis and includes a factory markup plus a distributor and retailer markup. Energy price forecasts are inputs that are taken from the 1987 Annual Energy Outlook of the Energy Information Administration. Appliance usage inputs are taken from the relevant test procedures and recent P and G data. The Department seeks comments on the input to the LCC analysis, including the discount rate and energy price forecasts.

The differences in life-cycle costs between the base case and various levels of standards for dishwashers, clothes washers, and clothes dryers are presented in Tables 6.1–6.3 of the Technical Support Document. These LCC's are calculated at a seven percent discount rate; a higher rate, e.g., 10 percent, gives a smaller difference, while a lower rate, e.g., five percent, produces a greater difference. As discussed above, it has been argued that discount rates as high as 15 percent should be used. The Department did not use 15 percent in the LCC analysis; however, as can be seen in the various LCC curves, the use of a higher discount rate would result in a flatter curve with the minimum life-cycle cost dropping, i.e., approaching the baseline unit. If a higher discount rate were used, e.g., 15 percent, and energy prices were lower than average, the minimum life-cycle cost point could be less efficient than the baseline units.

When the LCC numbers are plotted graphically (on the Y axis) against unit energy consumption (on the X axis), the data generally produce a curve that is concave from above in shape. This means that at first the LCC curve will decline as efficiency improvements are made, will reach a minimum (which may or may not be discrete), and then rise. This indicates that the first efficiency improvements will produce energy savings, the value of which will more than pay for the design change. As efficiency improvements are made, it becomes increasingly costly to save more energy, and, eventually, the value of the energy savings will not cover the expenditures for the design improvements. *See* Technical Support Document, section 3.5.

The minimum of the LCC curve was of particular interest in the analysis. The minimum of the curve represents that level of efficiency improvements that maximizes the difference between the value of energy saved and the additional consumer expenditures for the relevant efficiency improvements. Therefore, design options that corresponded to the minimum point were of special consideration in establishing standard levels. Efficiency levels exceeding the LCC minima were generally rejected as standards as not being economically justified. At efficiency levels beyond the LCC minima, the incremental first cost of the product exceeds the value of the energy savings such that the average consumer does not realize an incremental benefit from the investment beyond the LCC minimum.

The Department conducted a net present value (NPV) analysis to assess the differential economic impacts on consumers that would occur from the adoption of amended standards for these three products compared to a base case with no change in the NAECA-imposed 1988 standards. *See* Technical Support Document, Chapter 5. The LBL–REM calculates the total expenditure for each product (discounted total value of energy consumption from 1993 through the last year of use for those products purchased through the year 2015), plus the total discounted expenses for equipment purchased from 1993 through 2015, with more stringent standards and with NAECA 1988 standards. The NPV analysis is similar to the LCC analysis, in that the greatest NPV should occur at the standard level that corresponds to the LCC minimum for the product.[12] The

[12] The net present value (NPV) of a standard, per appliance, is calculated for all affected appliances that are purchased in the projection period, while

Continued

NPV for each product at the different standard levels is identified in section III of this notice. The NPV calculation, is based on average efficiency from P and G and usage values.[13] This analysis does not take into account variations in appliance usage rates, local energy prices and consumer energy efficiency choices. Instead, the model assumes that nationwide average appliance usage rates, energy prices and efficiency apply to all consumers in all areas of the nation. In other words, it assumes that consumers who face high energy prices or expect to make extensive use of their appliances, will, on average, purchase the same distribution of appliance efficiencies as consumers facing low energy prices or low appliance usage rates. To the extent that individual consumer decisions are influenced by local (rather than national average) energy prices or by their individual (rather than national average) usage rates, the model could yield inaccurate results.

If, as DOE believes, consumers who face below-average energy prices are more likely to purchase less-efficient appliances, then the analysis is likely to understate the energy savings resulting from standards for these consumers. Likewise, for those consumers who would purchase more-efficient appliances, the analysis would overstate the energy savings resulting from standards. If the consumers who live in low- and high-energy cost areas would purchase less-efficient and more-efficient appliances, respectively, then valuing all energy savings at the national average energy price could overstate the value of energy savings to the former by more than it understates the value of energy savings to the latter. Thus, under these circumstances, the net effect of assuming a national average energy price would be to overestimate the total value of energy saved.

Similarly, if consumers who live in low- and high-energy usage areas would purchase less-efficient and more-efficient appliances, respectively, then using the national average energy usage rate could overstate the energy savings to the former by more than it understates the energy savings to the latter. Thus, under these circumstances, the net effect of assuming a national average energy usage rates could be to overestimate the total amount of energy saved.

In either case, to the extent that the model inaccurately predicts the value and/or quantity of energy savings, then it could lead to an inaccurate estimate of life-cycle cost savings and a standard that is different from the optimal standards. DOE does not have the data to determine if, or to what extent, the NPV calculations are affected by using average energy prices, usage rates and efficiency. DOE requests comments on this issue.

Specifically, DOE requests data on the effects of energy prices and usage rates on consumer energy efficiency choice. Such data could include manufacturer warranty and/or registration data that includes appliance efficiency and purchase location. Similarly, DOE also requests data on the effect of energy efficiency on usage rates. DOE also solicits comments on the likely improvements to the analysis that would result from the incorporation of such data and, in the absence of relevant data, alternative analytic approaches to capture the effect of these variations.

3. *Energy Savings.* While the significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, the Act requires DOE, in determining the economic justification of a standard, to consider the total projected savings that are expected to result directly from revised standards. DOE used the LBL–REM results, discussed earlier, in its consideration of total projected savings. The savings for the three products are provided in section III of this notice.

4. *Lessening of Utility or Performance of Products.* This factor cannnot be quantified. Whirlpool and AHAM both urged that the Department not establish any amended standards that could lessen the utility of the affected product to the consumer. (Whirlpool, No. 1, at 16; AHAM, No. 5, at 8). The Department believes that it has met this concern by a careful selection of product classes, as discussed below.

In establishing classes of products and design options, the Department tried to eliminate any degradation of utility or performance in the three products under consideration in this rulemaking. That is, to the extent that comments or DOE's own research indicated that a product included a utility or performance-related feature that affected energy efficiency, a separate class with a different efficiency standard was created for that product. In this way the Department attempted to minimize the impact of this factor as a result of the standards that were analyzed.

5. *Impact of Lessening of Competition.* It is important to note that this factor has two parts; on the one hand, it assumes that there could be some lessening of competition as a result of standards; and, on the other hand, it directs the Attorney General to gauge the impact, if any, of that effect.

In order to assist the Attorney General in making such a determination, the Department studied the affected appliance industries to determine their existing concentrations, levels of competitiveness, and financial performances. This information will be sent to the Attorney General. *See* Technical Support Document, Chapter 7. The Department has also provided the Attorney General with copies of this notice and the Technical Support Document for his review.

6. *Need of the Nation to Conserve Energy.* One measure of the need of the Nation to conserve energy is the country's reliance on energy in the form of oil, especially imported oil. This was documented in 1987 in a DOE report (*Energy Security: A Report to The President of The United States,* Washington, D.C.: U.S. Department of Energy, March 1987). In that report, U.S. energy security essentially was considered to be a function of free oil markets. The three products being considered in this rulemaking (dishwashers, clothes washers, and clothes dryers) are all fueled by energy forms other than oil, specifically electricity for all three and natural gas for some clothes dryers. While some oil is used to generate the electricity on which these products operate, that is a very small part of our national energy picture. Specifically, only 4.6 percent of net electricity was generated by petroleum in 1987. DOE requests comments on this issue.

7. *Other Factors.* This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that he deems to be relevant. To date, the Department has not identified any such factors with regard to these three products.

III. Product-Specific Discussion

a. Dishwashers

1. Classes

In the advance notice, the Department discussed its methodology for reviewing the energy conservation standards for dishwashers that were established by the Act, to determine if the standards should be amended. NAECA currently

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the life-cycle cost (LCC) is calculated only for the lifetime of an appliance that is purchased in the first year of the relevant standard. Therefore, NPV and LCC estimates, per appliance, may not correlate exactly.

[13] The NPV usage values are taken from recent Proctor and Gamble data, while the LCC usage values were taken from both the DOE test procedures and the Proctor and Gamble data.

prescribes a design standard for dishwashers; units manufactured after January 1, 1988, are required to have an option to dry without heat.

The following are the classes of dishwashers that have been identified:

(A) Compact Dishwasher (115V)

(B) Standard Dishwasher (115V)

(C) Water Heating Dishwasher, Compact (115V)

(D) Water Heating Dishwasher, Standard (115V)

(E) Water Heating Dishwasher, Compact (230V)

(F) Water Heating Dishwasher, Standard (230V)

2. Design Options

The following is a list of design options that were examined:

(A) Improved Food Filters

(B) Improved Fill Control

(C) Improved Motor Efficiency

3. Comments on the Advance Notice of Proposed Rulemaking

Whirlpool commented that after reviewing all of the design options for dishwashers included in the advance notice, it found that not one could be utilized to improve the energy efficiency of those machines. Whirlpool claimed that many of the possible configurations of design options identified by DOE have already been developed and have achieved the maximum energy efficiency possible; in other cases, the design improvements are so costly that the extra expense would outweigh any conservation benefits. (Whirlpool, No. 1, at 3–7).

After reviewing the potential energy conservation improvements of the design options for dishwashers, the Department has found that several, i.e., improved food filters, motors, and water fill controls, do exhibit the potential to save energy above what Whirlpool claims is possible.

NRDC stated that DOE should consider the "broadest possible range of measures." For dishwashers, NRDC suggested the Ecotech I prototype; heat pumps for water heating dishwashers; and the range of designs currently available. (NRDC, No. 3, at 4–6). The Department analyzed the Ecotech I, and performed literature reviews on new designs. In addition, data were sought from manufacturers on current and proposed designs. Heat pump dishwashers have not been analyzed because the Department could not determine if design is technologically feasible since no data have been presented and no prototypes exist.

4. Efficiency Levels Analyzed

DOE examined a range of standard levels, including the 1988 NAECA standard. As discussed above, the impacts of any revised standards were compared to the 1988 NAECA standard; therefore, the impacts of the base case are generally not presented because they are calculated to be zero.

Table 3–1 presents the efficiency levels, other than the base case, selected for analysis for 1993. Alternate levels were selected to generate a range of impacts for analysis. Initially, the levels were selected for the class of standard dishwasher (115 volt). Level 3 corresponds to the highest efficiency level identified in the engineering analysis. Levels 2 and 1 correspond to lower efficiencies than that of level 3. Each level was analyzed discretely in the engineering analysis. Standard levels for the other class of dishwashers were based on the combination of design options for the standard dishwasher (115 volt).

The Department did not analyze compact and standard-sized water heating dishwashers (115 volt) separately. Nevertheless, the impacts for those classes are expected to be similar since the design options that would be adopted would be the same.

Because of the small amount of empirical data on compact water-heating dishwashers (115V and 230V) and on standard water-heating dishwashers (230V), the Department was unable to analyze these classes. As a result, the Department is not proposing any amended standard for them. Nevertheless, the standards that require dishwashers of all classes to have an option today without heat will remain in effect for these three classes.

TABLE 3–1—ALTERNATIVE EFFICIENCY LEVELS FOR 1993 FOR DISHWASHERS

[Energy Factor=Loads/kWh/Yr.]

Product class	Level analyzed		
	1	2	3
Compact dishwashers (115V)	0.58	0.60	0.61
Standard dishwasher (115V)	.41	.42	.43
Standard water heating dishwasher (115V)	.44	.45	.46

Payback Period Table 3–2 presents the payback period for the efficiency levels analyzed for the most prevalent class of product (standard water heating dishwasher (115 volt)). Standard level 1 involves efficiencies achievable with an improved food filter, level 2 involves additional efficiencies achievable with an improved motor, and level 3 adds an improved water fill control. All three standard levels meet the rebuttable presumption test in that the payback is less than three years. Standard level 3 is also the maximum technologically feasible design option identified in the analysis. *See* Technical Support Document, Table 6.6.

TABLE 3–2—PAYBACK PERIODS (YEARS) STANDARD WATER HEATING DISHWASHER (115 VOLTS)

	Payback period
Standard level:	
1	0.9
2	1.3
3	2.1

Significance of Energy Savings. By the year 2000, the weighted average energy consumption of new dishwashers sold in the absence of revised standards is not projected to change compared to the year 1993. The weighted average energy consumption is projected to decline between the year 2000 and 2015. Overall, the average energy consumption is projected to decrease slightly from 1993 to 2015. *See* Technical Support Document, Table 5.2. This is because residential electricity rates are projected to decline from 1984 to 1995, then increase, reaching 1985 levels by 2015 (in real terms). *See* Technical Support Document, Table 4.5 and DOE/EIA–0383(87) Annual Energy Outlook 1987, Table A.3. Without upward pressure on operating expenses, the LBL–REM projects that there will be no major energy consumption improvements. The LBL–REM projects, for the period 1993–2015, the following energy savings would result from the increased standards:

Level 1—0.39 Quads
Level 2—0.52 Quads
Level 3—0.65 Quads

See Technical Support Document, Table 5.3

On the basis of the above, DOE believes that the increased standard levels considered for dishwashers would result in a significant conservation of energy. However, DOE believes that the LBL–REM base case projections of no improvement in the efficiency of dishwashers compared to the year 2000 is unlikely. Between 1972 and 1983, the average efficiency of dishwashers increased nearly 55 percent. During this time, the nation experienced both declining and increasing real energy prices. DOE believes there is no reason to conclude that the average efficiency of dishwashers will not increase. Changes

in shipment weighted energy factor (SWEF) can be brought about by a number of factors including heightened consumer awareness. DOE requests comments on this issue particularly the LBL–REM's forecast of dishwasher efficiency.

Economic Justification— A. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the level 1 efficiency (improved food filter) is $7.50, while the addition of improved motor efficiency in standard level 2 costs an additional $4.00. Standard level 3 provides efficiencies obtained with an improved fill control, which adds another $8.00. *See* Technical Support Document, Tables 3.3 and 3.4.

For consumers, standard level 1 would cause a price increase of $10.75 for a standard dishwasher; standard level 2 would add an additional $6.21, while level 3 would be $12.57 more. The price increases caused by standard levels for water-heating dishwashers are the same. *See* Technical Support Document, Tables 3.18 and 3.19.

The Lawrence Berkeley Laboratory Manufacturers Impact Model (LBL–MIM), in the base case, projects manufacturers' long-run return-on-equity (ROE) to be 6.80 percent for dishwashers. At level l, the LBL–MIM predicts that a prototypical dishwasher manufacturer would have an ROE of 6.64 percent, a loss of 2.4 percent. At level 2, the manufacturer's ROE is expected to be 6.72 percent, a 1.2 percent decline. At level 3, however, the LBL–MIM projects that the prototypical dishwasher mamufacturer's ROE would be 6.97 percent, an increase of 2.5 percent over the base case. *See* Technical Support Document, Table 7.9.

This industry has displayed continuing consolidation for several decades, especially during periods of low earnings. By increasing profitability, as DOE projects at standard level 3, standards could lead to a reduction in the rate of such consolidations, thereby possibly contributing to more robust competitiveness than is likely in the base case.

The Department's characterization of the prototypical manufacturer in the base case assumes that manufacturers' typical dishwasher designs are based on the combination of options presented in the Engineering Analysis for the baseline unit. If manufacturers use a different combination of design options to produce dishwashers that minimally comply with the 1993 standard, the Department may have inappropriately characterized the financial position of the prototypical manufacturer in the LBL–MIM. Furthermore, since financial data of the type needed to characterize the prototypical manufacturer are generally not available, DOE had to make a number of assumptions based on the limited data publicly available, e.g., Securities and Exchange Commission 10K reports and company annual reports. Because of the significant impact that these assumptions could have on the results of the analysis, DOE requests comments on these issues, particularly from small manufacturers.

The sensitivity analysis, however, indicates that the dishwasher industry is sensitive to price and operating expense elasticities. For example, the high price and low operating cost scenario indicates that the effects of standards would be to decrease return-on-equity for dishwasher manufacturers by 2.5 percent. *See* Technical Support Document, Table 7.13. While these scenarios are theoretically possible, the Department expects that the original analysis will be the likely outcome.

B. *Life Cycle Cost and Net Present Value.* The LCC analysis indicates that for each possible standard level the increase in purchase price would be offset by savings in operating expenses. Standard level 3 corresponds to the minima of the life-cycle cost curves. *See* Technical Support Document, Figures 3.17 and 3.18. This indicates that the standard level would not cause any economic burden on the average consumer. For consumers, standard level 1 would cause a reduction in life-cycle cost of $98.56 for a standard dishwasher; standard level 2 would reduce life-cycle cost an additional $5.45, while level 3 would result in a further decrease of $.96 compared to level 2. For standard water heating dishwashers standard level 1 would cause a reduction in life-cycle cost of $92.09; standard level 2 would reduce life-cycle cost an additional $5.45, while level 3 would result in an increase of $.02 compared to level 2. *See* Technical Support Document, Table 6.3.

While DOE examined the effect of different discount rates, five, seven, and 10 percent, on the LCC curves and generally found little impact, the Department did not consider higher discount rates. Similarly, DOE did not consider differemt energy prices, including regional prices, in the LCC analysis. However, DOE did examine the effect of a usage rate that was different from the 322 cycles per year set by the DOE test procedure. Recent Procter and Gamble data appear to indicate that national average dishwasher annual usage rate is 260 cycles per year, nearly 20 percent less than the test procedure representative average use cycle. The lower usage numbers tend to result in lower life-cycle cost estimates, with the purchase price carrying greater weight in the calculations. For standard dishwashers, at the lower usage rate, standard level 2 becomes the minimum life-cycle cost point. Standard level 1 would cause a reduction of $89.23 for a standard dishwasher; standard level 2 would reduce life-cycle cost an additional $3.21, while level 3 would result in an increase of $1.42 compared to level 2. *See* Technical Support Document, Table 6.3. As can be seen, not only does the minimum life-cycle cost point change but the overall reduction in life-cycle costs would be reduced by approximately 10 percent. The Department requests comments on the effects of usage rates.

Another way to compare the costs and benefits that would be associated with any standard level is to estimate the net impact on life-cycle cost. Such a comparison for each standard level is shown below. The incremental consumer price for each standard level for all equipment purchased in the first year after the standard goes into effect; the total operating expense savings calculated at a 5, 7 and 10 percent discount rates; and the net difference in discounted savings and incremental prices paid are presented. The results show that, for each standard level, there is a positive net reduction in life-cycle cost; which indicates that, using national average values, the benefits of each candidate standard level exceed the increase in price paid for the appliance by the affected consumers.

DISHWASHER NET PRESENT VALUES

[In millions of dollars, 1987]

Standard level	Price increase	Operating expense savings			LCC differences
		5%	7%	10%	
1	29.78	268.61	240.42	205.90	210.64
2	51.05	304.65	272.67	233.51	221.62
3	95.27	346.47	310.13	265.57	214.86

The LBL–REM employs national average energy prices and usage rates. The appropriateness of this approach depends on the relationship between energy prices and consumer choice of efficiency levels and the relationship between consumers' expected usage and choice of energy efficiency level. If those consumers who face higher energy prices and/or expect to use their dishwashers more intensively, are on average, more likely to buy higher efficiency dishwashers, then a modeling approach that assumes that national average energy prices and usage rates apply to all consumers will yield results

that overstate the net benefits that could be expected. As discussed above, recent Procter and Gamble data have shown declines in usage rates for dishwashers. The Department requests comments and data on the effects of energy prices and expected usage rates on the consumer's choice of efficiency level.

The NPV analysis indicates that if a standard were adopted at level 1, there would be a net present value of $710 million from energy savings over the period 1993–2015. At levels 2 and 3, the corresponding NPV's would be $811 million and $609 million, respectively. *See* Technical Support Document, Table 5.6.

C. *Energy Savings.* As discussed above, DOE proposes that standards, at each candidate standard level, would result in a significant saving of energy. The Department conducted several sensitivity cases, one of which was to assume that after 1993, the market would produce dishwashers of an efficiency that increases more than the standards would otherwise require.

The base case projects that there will be only slight increases in the SWEF of dishwashers after 1993, i.e., that the private sector will not continue to improve the efficiency of those appliances much beyond the mandated levels. The sensitivity case assumes that after the 1993 standards are in place, the base case efficiency growth will increase from 0.5 percent annually to 2.0 percent. The Department believes that the maximum improvement in market-induced dishwasher energy efficiency after 1993 would be the historical improvement rate, 3.1 percent annually. The Department does not have any reason to assume that energy efficiency would improve at a greater than historical rate.

The Department believes that the range of market-induced efficiencies that would occur after 1993 in the absence of additional Federal standards would be from a low of no improvement to a high of an historical average growth rate. If SWEF increases, the energy savings due to standards would be less than calculated.

D. *Lessening of Utility or Performance of Products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of dishwashers. However, there is no assurance that future utility or performance of dishwashers would not be lessened as a result of standards-induced disincentives to investments in energy-using new features.

In addition, the Department believes adoption of any of the design options considered will not affect utility or performance.

E. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

F. *Need to Save Energy.* Dishwashers use electricity as a primary energy source, both for operation of the motors and for the electric coils that are used in the drying cycle. In addition, that portion of water heater electricity consumption that provides hot water to the dishwasher is considered to be indirect dishwasher electricity consumption. Similarly, since some of the hot water that is supplied to dishwashers comes from gas water heaters, dishwashers are responsible for indirect gas consumption, too.

In 1987, source electricity generation in the United States totaled 27.6 quadrillion Btu's, and gas consumption totaled 17.18 quadrillion Btu's. Dishwashers accounted for .8 percent (or .22 Quads) of the electricity generation and .4 percent (or .069 Quads) of the gas consumption: over six percent of that dishwasher energy consumption would be saved by standard level 1, and over eight percent of that consumption would be saved at level 2. Furthermore, standard level 3 would save over 10 percent of the 1987 dishwasher energy consumption. The sensitivity analysis on the LBL–REM indicates that if market improvements and consumer awareness of appliance efficiencies continue at their historical rates, then the projected savings at level 3 would be .17 Quads as compared to .65 Quads.

Conclusion. After careful consideration of the analysis, the Department is proposing a revision of the dishwasher standard to standard level 1. The Department proposes that standard level 1 for dishwashers saves a significant amount of energy, and is economically justified.

As discussed above, DOE's analysis indicates that there would be a significant energy savings at each candidate standard level. For standard level 1, during the period 1993–2015, this savings would be .39 Quad of primary electricity compared to the base case. This represents five percent of the expected dishwasher energy consumption over that period.

Although standard level 1 would cause an increase in the initial price to the consumer of $10.75, the standard is estimated to reduce the typical consumer's life-cycle cost by $99. In addition, with a payback of 0.9 years, the candidate standard level satisfies the rebuttable presumption test, i.e., it has a value of energy savings that repaid the initial purchase price increase to the average consumer in less than three years.

The technologies that may be necessary to meet the standard are available now in the form of improved food filters used by some manufacturers. For manufacturers, the standard is expected to result in long-run returns on equity of 6.64 percent.

The results of the analysis discussed above, could change if a different discount rate were used, energy prices drop, or if the uses of national average energy prices and national appliance usage rates have introduced an uncertainty into the analysis.

Standard levels 2 and 3 were both found to save a significant amount of energy but the Department proposes that neither is economically justified. Standard levels 2 and 3 result in marginal benefits compared to standard level 1. The life-cycle cost savings compared to standard level 1 are calculated to be $5.45 and $6.41 respectively. While the energy savings are projected to be 0.52 and 0.65 Quads. The payback period for standard levels 2 and 3 are less than 3 years; however, the bulk of the consumer benefits are due to standard level 1 benefits. Furthermore, if energy prices were to drop from the projected or usage rates were lower than assumed, standard level 1 could become the minimum life-cycle cost point. If this were to occur, DOE is concerned that consumers would be precluded from purchasing the most cost-effective unit.

Level 3 standards, the maximum technologically feasible level, involves technologies that the Department believes are generally available, i.e., improved food filter, improved motor and improved fill control. However, the Department finds that the price of the improved fill control, $12.57, results in a $13.53 reduction in lifetime operating cost which yields the life-cycle operating cost savings of $.96, or less than $.10 per year over the average dishwasher lifetime. While the benefits of standards, on a life-cycle cost basis, are calculated to exceed the cost to consumers, the Department believes the risks of standards at this level exceed the possible benefits. As can be seen in Figure 3.15 of the Technical Support Document, the life-cycle cost curve for standard dishwashers is relatively flat between standard levels 1 and 3; DOE believes that the differences in the life-cycle costs between points 1, 2, and 3 are probably less significant than the possible inaccuracy of the analysis. For example, if usage is lower than that assumed, or if energy prices are lower than those used in the analysis,

incremental increases in price to meet standard level 3, as compared to standard level 2, would likely not be met by the value of the energy saved. Furthermore, the analysis predicts energy savings of .65 Quads, or .13 Quads over standard level 2. The Department believes that the marginal energy saving benefits of level 3, as compared to the uncertain nature of the analysis as discussed, particularly with respect to the LBL–REM's forecast of relatively small improvements in SWEF over the period of analysis and the questions surrounding dishwasher usage and appropriate discount rates do not justify standards at this level. Therefore, the Department concludes for the reasons discussed above, that revised dishwasher standards at standard level 3 are not economically justified.

Level 2 standards involve technologies that the Department believes are widely available, i.e., improved food filter and improved motor. However, the Department finds that the price of the improved motor, $6.21, results in a $11.66 reduction in lifetime operating cost or a life-cycle cost savings of $5.45; approximately $.50 per year over the average dishwasher lifetime. As discussed above, the Department does not believe that these marginal savings justify standards at this level, because of the associated risks at this level. Therefore, the Department concludes that revised dishwasher standards at standard level 2 are not economically justified.

In weighing the costs and benefits of standards, the Department gave considerable weight to the impacts on consumers as measured in the life-cycle cost analysis. The major impact of standards on life-cycle cost occurs at standard level 1. Because of the uncertainty of the analysis, i.e., energy price forecasts and usage rates, consumers may not receive the marginal benefits in life-cycle costs projected at levels 2 and 3. Furthermore, DOE believes that standard levels 2 and 3 could be beyond the minimum life-cycle cost point, precluding consumers from purchasing the most cost-effective unit. Therefore, DOE is proposing standard level 1. The Department request comments on the above, including DOE's weighing of the factors.

b. Clothes Washers

1. Classes

In the advance notice, the Department discussed its methodology for reviewing the energy conservation standards for clothes washers that were established by the Act, to determine if the standards should be amended. NAECA prescribed a design standard for clothes washers; units manufactured after January 1, 1988, are required to have an option for a cold water rinse.

The following are the classes of clothes washers that have been identified:

Top Loading, Compact (1.6 ft.^{3} capacity or less)
Top Loading, Standard (1.61 to 2.74 ft.^{3} capacity)
Top Loading, Large (2.75 ft.^{3} capacity or greater)
Top Loading, Semi-Automatic
Front Loading
Suds Savers

A review of the characteristics and data regarding fully automatic top loading washers indicates that class distinction by capacity may be appropriate. Compact washers offer the utility of small cabinet size allowing them to be placed in size-restricted spaces. Larger washers offer the utility of time savings for users that have large laundry loads. However, the energy use characteristics of existing machines indicates that energy use is not a linear function of capacity as might be expected. This seems to preclude having one standard for all capacities. From the data collected to date, the Department is unable to discern exactly why energy usage varies disproportionately with capacity, but suspects that different mixes of temperature control functions may play a major role. If this is the case, temperature control function may be a better criteria than capacity by which to distinguish classes. The Department seeks comments on this subject.

Furthermore, since the last three of these classes collectively represent less than 5 percent of total industry shipments, the Department did not analyze them and is therefore not proposing amended standards for these classes; however, the existing standard requiring a cold water rinse option is proposed to remain in effect.

2. Design Options

The following is a list of design options that were examined:

Warm Rinse Elimination
Improved Fill Control
Reduced Thermal Mass
Increased Motor Efficiency
Thermostatically Controlled Mixing Valves Employed

3. Comments on the Advance Notice of Proposed Rulemaking

For clothes washers, NRDC suggested that the Department consider: (a) Reduced wash cycle temperatures; (b) insulation of the drum, (c) a combination of (a) and (b); and (d) the wide range of currently available designs for energy efficiency in clothes washers. (NRDC, No. 3, at 6). In its analysis, the Department did consider each of these energy conserving options. Reduced wash cycle temperatures were dismissed since studies have shown that such lowered water temperatures affect performance. Otherwise the Department did examine all energy-concerning designs in clothes washers that could be found through literature searches, discussions with industry personnel and researchers, both domestically and abroad.

NRDC suggested that the "suds savings" feature of certain clothes washers be considered a conservation measure, rather than a separate class. (NRDC, No. 3, at 3).

The Department believes that "suds savings" provides a unique utility to the consumer, both as a feature in itself, and as a water and detergent saver. Furthermore, because of the fact that "suds savings" requires a nearby sink or other storage device, its applicability as a conservation measure could not be universally employed. Therefore, the Department has concluded that "suds savings" clothes washers should be a separate class.

The Speed Queen Company (Speed Queen) suggested that the large capacity clothes washer not be considered as a separate class, but rather it should remain in the class as standard machines so as to reflect their higher actual energy usage. (Speed Queen, No. 4, at 1–2). The Department agrees with Speed Queen that large capacity washers use more energy. The Department, however, is proposing to retain large capacity washers as a separate class because of their utility as discussed above. If large washers were to be grouped together with standard size washers and required to meet a single standard, the large washers would likely have more difficulty in meeting that standard because energy use is a function of volume.

4. Efficiency Levels Analyzed

Table 3–3 presents the efficiency levels that have been selected for analysis for 1993. These efficiency estimates are for a standard capacity, top-loading clothes washer. Alternate levels were selected to generate a range of impacts for analysis. As noted earlier, standard level 1 corresponds to efficiencies achieved by elimination of a warm water rinse; level 2 corresponds to efficiencies achieved by thermostatic mixing valves; level 3 adds a more efficient motor; and, level 4 substitutes a plastic tub.

TABLE 3-3.—STANDARD LEVELS ANALYZED FOR TOP-LOADING CLOTHES WASHERS

Size	Baseline	Energy Factor (cu. ft./kWh)			
		1	2	3	4
Compact [1]	0.76	0.96	1.02	1.04	1.05
Standard [2]	.98	1.23	1.32	1.34	1.35
Large [3]	.90	1.13	1.21	1.23	1.24

[1] Capacity less than 1.6 ft.³
[2] Capacity 1.6 ft.³ to 2.75 ft.³
[3] Capacity greater than 2.75 ft.³

Payback Period. Table 3-4 presents the payback period for the efficiency levels analyzed. Standard level 1 involves efficiencies achievable with eliminating warm water rinse altogether, level 2 involves additional efficiencies achievable with thermostatic mixing values, level 3 adds an improved motor, and level 4 replaces the metal tub with a plastic one. For standard capacity, top-loading clothes washers, each standard level satisfies the rebuttable presumption test, i.e., the additional cost of purchasing a product at each efficiency level will be less than three times the value of the energy savings that the consumer will receive during the first year. *See* Technical Support Document Table 6.5.

TABLE 3-4.—PAYBACK PERIODS OF DESIGN OPTIONS (YEARS) FOR STANDARD SIZE, TOP-LOADING CLOTHES WASHERS

	Payback Period
Standard Level:	
1	0
2	0.9
3	1.2
4	1.8

Significance of Energy Savings. By the year 2015, the weighted average energy consumption of new clothes washers sold in the absence of amended standards is projected to be 923 kilowatt hours per year (kWh/yr) a decline from 1152 kWh/yr in 1987. *See* Technical Support Document, Table 5.9. At standard levels 1 through 4, the average consumption is expected to be 895, 867, 860, and 858 kWh/yr, respectively. *See* Technical Support Document, Table 5.10. The LBL-REM projects, for the period 1993-2015, the following energy savings would result from the increased standards:

Level 1—0.70 Quad
Level 2—1.21 Quads
Level 3—1.38 Quads
Level 4—1.50 Quads

Economic Justification.—A. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the level 1 efficiency is $0; to meet levels 2-4, the manufacturers' cost increases, as compared to the base case, are $13, $17, and $23, respectively, for a standard, top-loading clothes washer. *See* Technical Support Document, Table 3.8.

At those levels of efficiency, the incremental consumer price increases are $0, $19, $25.30, and $33.80 for standard levels 1-4, respectively. *See* Technical Support Document, Table 3.16.

The LBL-MIM results for clothes washers show that standard level 1 would cause manufacturers to have a decline in ROE from 6.64 percent in the base case to 6.45 percent (a decline of 2.9 percent). Standard levels 2-4, however, are projected to improve manufacturers' ROE's by 3.5 percent, 6.3 percent, and 8.4 percent, respectively. *See* Technical Support Document, Table 7.17. This industry has displayed continuing consolidation for several decades, especially during periods of low earnings. By increasing profitability, as DOE projects at standards levels 2, 3, and 4, standards could lead to a reduction in the rate of such consolidations, thereby possibly contributing to more robust competitiveness than is likely in the base case.

The Department's characterization of the prototypical manufacturer in the base case assumes that manufacturers' typical clothes washer designs are based on the combination of options presented in the Engineering Analysis for the baseline unit. If manufacturers use a different combination of design options to produce clothes washers that minimally comply with the 1993 standard, the Department may have inappropriately characterized the financial position of the prototypical manufacturer in the LBL-MIM. Furthermore, since financial data of the type needed to characterize the prototypical manufacturer are generally not available, DOE had to make a number of assumptions based on the limited data publicly available, e.g., Securities and Exchange Commission 10K reports and company annual reports. Because of the significant impact that these assumptions could have on the results of the analysis, DOE requests comments on these issues, particularly from small manufacturers.

B. *Life Cycle Cost and Net Present Value.* The LCC analysis indicates that at each possible standard level the increase in purchase price would be offset by savings in operating expenses. *See* Technical Support Document, Tables 3.16 and 3.17. Also, of the four candidate standard levels, level 3 had the lowest consumer life-cycle cost. This indicates that the standard level would not cause any economic burden on the average consumer because of the decreasing life-cycle costs.

Standard level 1 would cause a reduction in life-cycle cost of $147 for a top loading standard-sized clothes washer; standard level 2 would reduce life-cycle cost an additional $19, standard level 3, the minimum life-cycle cost point, an additional $4, while standard level 4 would result in an increase of $7 compared to standard level 3. While DOE examined the effect of different discount rates, 5, 7, and 10 percent, on the LCC curves and generally found little impact, the Department did not consider higher discount rates. Similarly, DOE did not consider different energy prices, including regional prices, in the LCC analysis. However, DOE did examine the effect of a usage rate different from the 416 cycles per year set by the DOE test procedure. Recent Procter and Gamble data appear to indicate that the national average clothes washer annual usage rate is 406 cycles per year, approximately 3 percent less than the test procedure representative average use cycle. The slightly lower usage numbers tend to result in lower life-cycle cost estimates, with the initial purchase price increase carrying greater weight in the calculations. *See* Technical Support Document, Tables 3.16 and 3.17.

Another way to compare the costs and benefits that would be associated with any standard level is to estimate the net impact on life-cycle cost. Such a comparison for each standard level is shown below. The incremental consumer price for each standard level for all equipment purchased in the first year after the standard goes into effect; the total operating expense savings calculated at a 5, 7 and 10 percent discount rates; and the net difference in discounted savings and incremental prices paid are presented. The results show that, for each standard level, there is a positive net reduction in life-cycle cost; which indicates that, using national average values, the benefits of each candidate standard level exceed the increase in price paid for the appliance by the affected consumers.

CLOTHES WASHER NET PRESENT VALUES

[In millions of dollars, 1987]

Standard level	Price increase	Operating expense savings			LCC differences
		5 percent	7 percent	10 percent	
1	29.27	461.70	407.12	342.03	377.85
2	64.39	726.58	640.75	538.09	576.36
3	99.11	783.79	691.19	580.67	592.08
4	153.77	803.95	709.01	595.63	555.23

The LBL–REM employs national average energy prices and usage rates. The appropriateness of this approach depends on the relationship between energy prices and consumer choice of efficiency levels and the relationship between consumers' expected usage and choice of energy efficiency level. If those consumers who face higher energy prices and/or expect to use their dishwashers more intensively, are, on average, more likely to buy higher efficiency dishwashers, then a modeling approach that assumes that national average energy prices and usage rates apply to all consumers will yield results that may overstate the net benefits that could be expected. As discussed above, recent Procter and Gamble data have shown declines in usage rates for clothes washers. The Department requests comments and data on the effects of energy prices and expected usage rates on consumer's choice of efficiency level.

The NPV analysis indicates that standard level 1 would produce a net present value of $1.45 billion to consumers. The corresponding NPV numbers for levels 2–4 are $2.47 billion, $2.62 billion, and $2.47 billion, respectively. *See* Technical Support Document, Table 5.14.

C. *Energy Savings.* As indicated above, standards will result in savings of electricity consumption for clothes washers. If, however, the marketplace continues to demand changes in efficiency at the same rate as historically, the LBL–REM projects that energy savings from standards over the 1993–2015 period will be reduced by .43 Quads.

D. *Lessening of Performance of Products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of clothes washers.

Standard level 1 involves an efficiency level that was attained by eliminating the warm water rinse option. It could be argued that if manufacturers chose to achieve the standard's efficiency levels by eliminating that option, the utility of the clothes washer could be lessened. DOE appreciates that concern, but considers the utility of a clothes washer is its ability to clean clothes. The Department welcomes comments about the utility of a warm water rinse option in a clothes washer.

E. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

F. *Need to Save Energy.* Like dishwashers, clothes washers use electricity directly, and are responsible for the water heater energy consumption that is necessary to supply the heated water to the clothes washer. That water heater energy consumption is primarily either electricity or natural gas, depending upon how the water heater is fueled. Consequently, clothes washers are responsible for both gas and electricity consumption. In 1987, 1.6 percent of source electricity (or, .442 Quads) and 1.4 percent of natural gas consumption (or, .241 Quads) were consumed by clothes washers. Standard level 1 would save nearly five percent of the .683 Quads that clothes washers consumed in 1987. Standard levels 2 through 4 would save 8.1 percent, 9.2 percent, and 10.0 percent, respectively. The sensitivity analysis on the LBL–REM indicates, however, that if consumer awareness of, and concern with, appliance efficiencies were to continue at their historic averages, the projected savings from standard level 3 would be 1.07 Quads over the 1993–2015 period.

Conclusion. After careful consideration of the analysis, the Department is proposing a revision of the clothes washer standard to include a range of standards that includes continuing the 1988 NAECA standards to standard level 2. The Department proposes that each candidate standard level for clothes washers saves a significant amount of energy and that standard levels 1 and 2 are economically justified. However, because of the analytical issues discussed above, the Department is not proposing specific standard levels within the above range. Rather, DOE is presenting the results of the analysis and is soliciting additional comment and information to be considered in promulgating the final rule. The final rule will specify a specific level for clothes washers; the level selected could include no change to the 1988 NAECA standards.

As discussed above, DOE's analysis indicates that there would be a significant energy savings at each candidate standard level of efficiency. During the period 1993–2015, the cumulative energy savings would be .7 Quads of primary electricity for level 1, and 1.2 Quads for level 2.

For standard level 1 these estimated savings can be achieved by eliminating warm water rinse options; if so, the standard would cause no extra costs to manufacturers and zero consumer financial expenditure. In fact, if the savings are attained by this change in feature, the standard is estimated to reduce the typical consumer's life-cycle costs by $144, from $3,870 to $3,726, with a zero payback period (since there are no additional expenses that are possible to pay back). For standard level 2 these savings would be achieved by adding thermostatic mixing values resulting in an increase in consumer expenditure of $19 with a corresponding reduction in life-cycle costs of $19.

Although these standards were assumed to eliminate warm water rinse, some consumers may continue to want clothes washers with a warm water rinse. If some manufacturers responded to these consumer demands by continuing to provide that feature, then those producers would have to meet the energy conservation standard by some other efficiency improvement. In doing that, there would be some additional manufacturing costs and higher consumer prices, the amounts of which would depend on the energy conservation improvement made. In addition, while the same amount of energy would conceivably be saved, there would be some positive payback period for the consumer, the length of which would also depend on the extra expense of the other efficiency improvement.

DOE believes the technologies that may be necessary to meet each standard level will be commercially available by 1993. The technologies to meet standard levels 1–3 are considered to be presently widely available or capable of being carried out. For manufacturers, level 1 standards are expected to produce increases in their return-on-equity of 6.45 percent, a decline of nearly 3 percent from the baseline. Standard level 2 will result in a return-on-equity of 6.87 percent. DOE considers the decline in ROE for level 1 to be an anomaly of the LBL–MIM which is caused by the no additional manufacturer cost of the eliminate warm rinse design option.

In the base case (1988 NAECA standards), DOE believes the analysis may not accurately estimate the impacts of amended standards. As discussed above, the Department believes that the LBL–REM overestimates energy consumption in the base case by forecasting moderate increases in

clothes washer efficiency. Furthermore, characterization of the prototypical firm in the LBL–MIM does not account for manufacturers electing to continue to provide a warm water rinse option, and adding other, presumably more costly design options.

For standard level 1, the Department proposes that there would be a significant conservation of energy and that the standards are projected to have little economic impact on manufacturers. In addition, the standards would likely not cause an increase in price to consumers. However, standards at this level, eliminating warm water rinse, may be viewed as negatively affecting the utility of the product. Also, the analysis may underestimate the economic impacts on consumers and manufacturers as discussed above, if manufacturers elect to retain the warm water rinse option and incorporate other design options.

For standard level 2, the Department proposes that there would be significant conservation of energy and that the standards are projected to have little economic impact on manufacturers. Standards at this level would likely be met with existing technology and would reduce consumer life-cycle costs.

More stringent standard levels were examined and rejected for the following reasons: First, the level 4 standard, the maximum technologically feasible level, is beyond the minimum life-cycle cost point; this would preclude the average consumer from purchasing the most cost-effective product; i.e., the minimum life-cycle cost unit. In addition, the results of the analysis could change if different annual cycles of operation were used, thereby reducing benefits of standards. While standard level 4 would save additional amounts of energy, 1.5 Quads as compared to 0.7 Quads, level 1, and would appear to have positive economic impacts on manufacturers—standards are forecast to cause an increase in manufacturers' return-on-equity—DOE does not consider these benefits to outweigh the consumer life-cycle cost impacts.

Level 3 standards, the minimum life-cycle cost point, involves technologies the Department believes to be widely available, i.e., warm rinse elimination, and use of thermostatic mixing valves and improved motors. However, the Department believes that the additional price of the improved motor, $6.30, and the corresponding decrease in life-cycle costs, $4 or approximately $.30 per year over the average clothes washer lifetime, do not justify standards at this level. DOE believes the risks of standards at this level exceed the possible benefits. As can be seen in Figure 3.17 of the Technical Support Document, the life-cycle cost curve for top-loading standard size clothes washers is relatively flat between standard levels 2 and 4; DOE believes that the differences in the life-cycle costs between these levels are likely less significant than the uncertainty of the analysis. For example, for consumers whose usage is lower than assumed by the test procedures or whose energy prices are lower than those used in the analysis, the incremental price increase to meet standard level 3, compared to standard level 2, would likely not be met by the value of the energy saved. In addition, the analysis predicts energy savings of 1.38 Quads, or .17 Quads over standard level 2. Finally, the impact of this standard on manufacturers is likely to increase manufacturers' return-on-equity. The Department believes that the marginal benefits as compared to the uncertainty in the analysis as discussed above, do not economically justify standards at this level. Therefore, the Department concludes that revised clothes washer standards at standard level 3 are not economically justified.

c. Clothes Dryers

1. Classes

In the advance notice, the Department discussed its methodology for reviewing energy conservation standards for clothes dryers that were established by the Act, to determine if the standards should be amended. NAECA prescribed a design standard for gas clothes dryers; standing pilot lights are prohibited on units manufactured after January 1, 1988. The following classes of clothes dryers have been identified:

Electric, Standard
Electric, Compact (120V)
Electric, Compact (240V)
Electric Heat Pump
Gas, Standard
Gas, Compact

Compact gas clothes dryers and heat pump clothes dryers were not analyzed for this rulemaking. In these instances the product classes represent a very small segment of the market and manufacturer or industry cost and performance data were not available. Therefore, cost and performance estimates were not performed. Compact gas clothes dryers will retain the ban on standing pilot lights and heat pump clothes dryers will have no standards imposed in this rulemaking. Both of these classes will be addressed in the next rulemaking cycle.

2. Design Options

The following is a list of design options that were examined:

Automatic Termination by Temperature Sensing
Automatic Termination by Moisture Sensing
Added Insulation
Recycle Heat Exchanger Used

3. Comments on the Advance Notice of Proposed Rulemaking

The Department received one comment concerning clothes dryers. In its comments, NRDC suggested consideration of both condensing and non-condensing heat exchangers, a variety of efficiencies of heat pump and microwave dryers, as well as spin-assisted drying. (NRDC, No. 3, at 7–8).

The Department has analyzed both condensing and non-condensing heat exchangers. In addition, DOE identified and analyzed one prototype heat pump dryer, which the Department believes largely captures the likely energy savings possible. The Department has placed heat pump clothes dryers in a separate class because such units are likely to be relatively larger than conventional dryers, relatively slower in drying time, and would probably need a drain (thereby preventing their universal applicability, and, as a consequence, affecting their utility).

DOE does not believe that a microwave dryer is technologically feasible. DOE requested data on microwave dryers in the advance notice; no information has been submitted. Therefore, this design option has not been evaluated.

Standard levels 1 and 2 represent efficiencies achieved by two different forms of automatic termination, temperature-sensing and moisture-sensing, respectively. The test procedure gives both moisture-sensing and temperature-sensing termination the same energy savings credit. In the analysis the Department gave moisture-sensing approximately 78 percent more credit than temperature-sensing termination. Nevertheless, in evaluating the results, the Department treated them as having the same energy savings impact. The Department requests comments about the relative energy efficiencies of these two forms of automatic termination in clothes dryers.

4. Efficiency Levels Analyzed

Tables 3–5 and 3–6 present the efficiency levels that have been selected for analysis for 1993.

TABLE 3-5.—STANDARD LEVELS ANALYZED FOR STANDARD CAPACITY ELECTRIC AND GAS CLOTHES DRYERS

Standard level	Energy factor (lb/kWh)	Energy factor (lb/kWh)
Baseline	2.75	2.49
1	2.95	2.66
2	3.12	2.82
3	3.19	2.88
4	3.39	3.04

TABLE 3-6.—STANDARD LEVELS ANALYZED FOR COMPACT CLOTHES DRYERS

Standard level	Compact 110V energy factor (lb/kWh)	Compact, 240V energy factor (lb/kWh)
Baseline	2.91	2.63
1	3.13	2.82
2	3.31	2.99
3	3.38	3.05
4	3.60	3.25

Payback Period.

Table 3-7 presents the payback periods for the efficiency levels analyzed. For standard-size electric clothes dryers, only standard level 4 does not satisfy the rebuttable presumption test; levels 1-3 all will result in paybacks to the consumer in less than 3 years.

For standard gas clothes dryers, however, there is no standard level whose efficiency improvement will repay itself to the consumer in less than 3 years.

TABLE 3-7—PAYBACK PERIODS OF DESIGN OPTIONS (YEARS) FOR STANDARD ELECTRIC AND GAS CLOTHES DRYERS

	Payback periods	
	Electric	Gas
Standard level:		
1	2.0	7.2
2	1.9	6.5
3	2.5	8.8
4	4.7	16.5

See Technical Support Document, Table 6.4.

Significance of Energy Savings. By the year 2015, the weighted average energy consumption of new electric and gas clothes dryers sold in the absence of amended standards is projected to be 933 kWh/yr and 3.52 million Btu's/year, respectively. *See* Technical Support Document, Tables 5.15 and 5.16.

The majority of the savings due to standards is electricity, since the LBL-REM projects that between 1993 and 1996 gas clothes dryer average energy consumption, in the base case, will decrease by over 10 percent (the base case electric clothes dryer energy consumption is not expected to change until after 2005). This is because residential electricity rates are projected to decline from 1984 to 1995, then increase, reaching 1985 levels by 2015 (in real terms).

The LBL-REM projects, for the period 1993-2015, the following energy saving would result from the increased standards:

	Electricity	Gas
Level 1	0.50 Quad	0
Level 2	0.87 Quad	0
Level 3	1.06 Quads	0.02 Quads
Level 4	1.70 Quads	0.08 Quads

On the basis of the above, DOE believes that the standard levels considered for clothes dryers would result in a significant conservation of energy (total gas and electricity).

Economic Justification—A. *Economic Impact on Manufacturers and Consumers.* The per unit increased cost to manufacturers to meet the level 1 efficiency is $8 for a standard electric or gas unit. To meet levels 2-4, the incremental cost increases are $5, $6.60, and $30, respectively. *See* Technical Support Document, Tables 3.12 and 3.13.

At those levels of efficiency, the incremental consumer price increases for an electric or gas dryer are $11.60, $7.10, $10.00, and $46.90, respectively. *See* Technical Support Document, tables 3.14 and 3.15.

The LBL-MIM results for clothes dryers estimate that standard level 1 would cause manufacturers to have an increase in ROE from 6.6 percent in the base case to 8.1 percent (a gain of 23 percent). At standard level 2 through 4, the percentage changes in ROE (compared to the base case ROE) are 42, 14, and minus 145 percent, respectively. *See* Technical Support Document, Table 7.25.

The reason for the striking decline in ROE under standard level 4 is thought to be the industry's price elasticity of demand: standard level 4 causes such a large price increase that a significant decline in the quantity of dryers demanded occurs. In LBL-MIM, this fall in unit sales causes a greater reduction in revenue than in variable costs and, as a result, profit and ROE decline.

This industry has displayed continuing consolidation for several decades, especially during periods of low earnings. By increasing profitability, as DOE projects at standard levels 1, 2 and 3 standards could lead to a reduction in the rate of such consolidations, thereby possibly contributing to more robust competitiveness than is likely in the base case.

The Department's characterization of the prototypical manufacturer in the base case assumes that manufacturers' typical clothes dryer designs are based on the combination of options presented in the Engineering Analysis for the baseline unit. If manufacturers use a different combination of design options to produce clothes dryers that minimally comply with the 1993 standard, the Department may have inappropriately characterized the financial position of the prototypical manufacturer in the LBL-MIM. Furthermore, since financial data of the type needed to characterize the prototypical manufacturer are generally not available, DOE had to make a number of assumptions based on the limited data publicly available, e.g., Securities and Exchange Commission 10K reports and company annual reports. Because of the significant impact that these assumptions could have on the results of the analysis, DOE requests comments on these issues, particularly from small manufacturers.

B. *Life Cycle Cost and Net Present Value.* For clothes dryers, the LCC analysis indicates that at each possible standard level, except level 4 for gas clothes dryers, the increase in purchase price would be offset by savings in operating expenses. *See* Technical Support Document, Tables 3.18 and 3.19. Also, of the four candidate standard levels, standard level 3 for electric clothes dryers and standard level 2 for gas clothes dryers had the lowest life-cycle cost. This indicates at these levels the standard would not cause any economic burden on the average consumer because of the decreasing life-cycle costs.

Standard level 1 would cause a reduction in life-cycle costs of $45.62 for electric standard clothes dryers and $7.68 for gas standard clothes dryers; standard level 2 would reduce life-cycle cost an additional $37.22 and $7.88 respectively; standard level 3 would result in a $5.28 reduction and $5.03 increase for standard electric and gas clothes dryers, respectively; standard level 4 would result in an increase of $1.59 and $30.84 respectively.

While DOE examined the effect of different discount rates, 5, 7, and 10 percent, on the LCC curves and generally found little impact, the Department did not consider higher discount rates. Similarly, DOE did not consider different energy prices, including regional prices, in the LCC analysis. However, DOE did examine

the effect of a usage rate different from the 416 cycles per year set by the DOE test procedure. Recent Procter and Gamble clothes washer data, when applied to clothes dryers, appear to indicate that the national average clothes dryer annual usage rate is 406 cycles per year, approximately 3 percent less than the test procedure representative average use cycle. The slightly lower usage numbers tend to result in lower life-cycle cost estimates, with the initial purchase price increase carrying slightly greater weight in the calculations. *See* Technical Support Document, Tables 3.18 and 3.19.

Another way to compare the costs and benefits that would be associated with any standard level is to estimate the net impact on life-cycle cost. Such a comparison for each standard level is shown below. The incremental consumer price for each standard level for all equipment purchased in the first year after the standard goes into effect; the total operating expense savings calculated at a 5, 7 and 10 percent discount rates; and the net difference in discounted savings and incremental prices paid are presented. The results show that, for each standard level, there is a positive net reduction in life-cycle cost; which indicates that, using national average values, the benefits of each candidate standard level exceed the increase in price paid for the appliance by the affected consumers.

CLOTHES DRYER NET PRESENT VALUES

[In millions of 1987 dollars]

Standard level	Price increase	Operating expense savings			LCC differences
		5 percent	7 percent	10 percent	
1	50.07	213.24	184.00	150.43	193.93
2	80.77	378.45	326.59	266.96	245.82
3	124.17	435.39	375.71	307.11	251.54
4	322.83	600.60	518.26	423.66	195.43

The LBL–REM employs national average energy prices and usage rates. The appropriateness of this approach depends on the relationship between energy prices and consumer choice of efficiency levels and the relationship between consumers' expected usage and choice of energy efficiency level. If those consumers who face higher energy prices and/or expect to use their dishwashers more intensively, are, on average, more likely to buy higher efficiency dishwashers, then a modeling approach that assumes that national average energy prices and usage rates apply to all consumers will yield results that overstate the net benefits that could be expected. As discussed above, recent Procter and Gamble data, when applied to clothes dryers, would appear to show a decline in usage rates for clothes dryers. The Department requests comments and data on the effects of energy prices and expected usage rates on consumer's choice of efficiency level.

The NPV analysis indicates that standard level 1 would produce a net present value of $856 million over the forecast period (all of the $856 million would be attributed to the standard on electric dryers). At standard level 2, the NPV would be $1,646 million, of which $1,625 would come from the standard on electric dryers. Standard level 3 would produce an electric dryer NPV of $1,711 million and a gas dryer NPV of minus $21 million, for a total NPV for the standard of $1,690 million. Lastly, standard level 4 produces the same $1,711 million NPV for electric dryers, but, under this standard level, the NPV for gas dryers is a negative $229 million, leaving the standard's NPV at $1,482 million. *See* Technical Support Document, Table 5.21.

C. *Energy Savings.* As indicated above, standards will result in savings of energy consumption by clothes dryers. The cumulative energy savings over the 1993–2015 period would range from 0.5 Quads at standard level 1 to 1.78 Quads at standard level 4.

D. *Lessening of Utility or Performance of Products.* As indicated above, DOE established classes of products in order to assure that the standards analyzed would not lessen the existing utility or performance of clothes dryers.

E. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

F. *Need to Save Energy.* Clothes dryers use electricity and natural gas as their energy sources. Approximately 1.8 percent of the nation's 1987 source electricity generation, and 0.3 percent of that year's natural gas consumption were used to operate clothes dryers. This represented a total of .55 Quads of energy, of which standard level 1 would save 4.1 percent. Standard levels 2 through 4 would save 7.2 percent, 9.0 percent, and 14.8 percent, respectively. The LBL–REM sensitivity analysis indicates, however, that if consumer awareness of, and concern with, appliance efficiency were to continue at its historical rate, the projected savings at standard level 2 would be .09 Quads over the 1993–2015 period.

Conclusion. After careful consideration of the analysis, the Department is proposing a revision of the clothes dryers standard to require all clothes dryers manufactured after January 1, 1993, to be equipped with an automatic termination device, either a temperature or moisture sensing termination control. The Department proposes that this prescriptive standard saves a significant amount of energy and is economically justified.

As discussed above, DOE's analysis indicates that there would be a significant energy savings at the candidate standard levels of efficiency. During the period 1993–2015, the cumulative energy saving is expected to be between .50 Quads (level 1) and .87 Quads (level 2) of primary electricity. This represents three to six percent of the expected clothes dryer electricity consumption over that period. DOE's analysis indicates that there would not be any gas saved due to the imposition of the proposed standard. However, DOE believes this is due to the LBL–REM forecast that between 1993 and 1996 the average energy consumption of new gas clothes dryers is to decrease which the Department believes is due to the incorporation of automatic termination devices.

Therefore, DOE believes that for gas clothes dryers the marketplace forces will demand automatic termination devices. While the analysis would appear to indicate that level 2, moisture termination, would save more energy, and do so at lower consumer life-cycle costs than level 1, temperature termination, the Department's clothes dryer test procedures treats both as having the same energy conservation potential. DOE's analysis of the available data indicates that either the two technologies have the same energy conservation potential or that the test procedure gives too much credit to temperature termination. There are presently no data available to DOE to indicate that the test procedure should give moisture termination a larger energy conservation credit. Finally, as indicated above, the data are not conclusive that the test procedure should be revised. Therefore, DOE is proposing a prescriptive standard that would allow manufacturers to choose either type of automatic termination device.

Although a prescriptive standard for electric clothes dryers would cause an increase in the initial price to the consumer of $11.57 and $18.67 for temperature-termination and moisture-termination, respectively, the standard is calculated to reduce the typical consumer's life-cycle costs of $38.80 and $69 for temperature-termination and moisture-termination, respectively. For gas clothes dryers, a prescriptive standard would cause an increase in the initial purchase price to the consumer by the same amount as electric clothes

dryers and with a corresponding decrease in life-cycle cost of $7.68 and $15.56 for temperature-termination and moisture-termination, respectively.

The technologies that may be necessary to meet the standard are available now in the form of temperature-sensing and moisture-sensing termination controls that are presently installed in many electric clothes dryers. For manufacturers, the standard is expected to result in an increase in long-run returns-on-equity from 6.60 percent to between 8.10 percent and 9.40 percent.

As discussed above, there is uncertainty about the forecasting effort; for example, the results of the analysis could have been different if energy prices changed differently from the energy price forecasts or if use of national energy prices and appliance usage rates introduced a bias.

The Department examined more stringent standard levels and rejected them for the following reasons: First the level 4 standard, the maximum technologically feasible level, is beyond the minimum life-cycle cost point for both gas and electric clothes dryers; this would preclude the average consumer from purchasing the most cost-effective product, i.e., the minimum life-cycle cost unit. Furthermore, the analysis indicates that the standard would cause an increase in the initial price to the consumer of nearly $46.00 for both electric and gas clothes dryers. This increase in price is expected to preclude many consumers from purchasing clothes dryers and would also cause the negative return-on-equity projected by the LBL—MIM. While standard level 4 would save additional amounts of energy (1.78 Quads as compared to 0.5 Quads, level 1); the Department believes standards at this level would have negative impacts on manufacturers and consumers as discussed above.

Level 3 standards involve technologies the Department believes to be generally available, i.e., automatic termination devices and 1 inch insulation. However, for gas clothes dryers the standard is beyond the minimum life-cycle cost point, which would prevent some consumers from being able to purchase the cost-effective units for them. For electric clothes dryers, the Department believes that the additional price of the insulation, $10.02, and the corresponding minimal decrease in life-cycle costs, $5.03 or less than $.50 per year over the average clothes dryer lifetime, do not justify standards at this level. DOE believes the risks of standards at this level exceed the possible benefits. As can be seen in Figure 3.19 of the Technical Support Document, the life-cycle cost curve for standard electric clothes dryers is relatively flat between standard levels 2 and 3; DOE believes that the difference in the life-cycle costs between these levels are likely less significant than the accuracy of the analysis. For example, for consumers whose usage is lower than assumed by the test procedures or whose energy prices are lower than used in the analysis, the incremental price increase to meet standard level 3, as compared to standard level 2, would likely not be met by the value of the energy saved. In addition, the analysis predicts electricity savings of 1.06 Quads, or .19 Quads over standard level 2. Finally, the impact of the standards on manufacturers is to reduce their return-on-equity from 9.4 percent at level 2 to 7.5 percent. The Department believes that the marginal benefits as compared to the burdens of the standards and the questionable nature of the analysis as discussed above do not justify standards at this level. Therefore, the Department concludes that revised clothes dryer standards at the standard level 3 are not economically justified.

IV. Environmental, Regulatory Impact, Takings Assessment, Federalism and Regulatory Flexibility Reviews

The Department has reviewed today's proposed action in accordance with the Department's obligations under:

- The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), the Council on Environmental Quality regulations implementing the procedural provisions of NEPA regulations (40 CFR Part 1500 et seq.), and the Department's own NEPA regulations (10 CFR Part 1021);
- Executive Order 12291 (46 FR 13193, February 19, 1981) which pertains to agency review of the impact of Federal regulations;
- Executive Order 12630 (53 FR 8859, March 18, 1988) which pertains to agency consideration of Federal actions that interfere with constitutionally protected property rights;
- Executive Order 12612 (52 FR 41685, October 30, 1987) which pertains to agency consideration of federal actions that would have a substantial direct effect on States, on the relationship between the National Government and the States, and on the distribution of power and responsibilities among the various levels of government; and
- The Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) which requires, in part, that an agency prepare an initial regulatory flexibility analysis for any proposed rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and explanation of that determination in the **Federal Register.**

a. Environmental Review

DOE prepared an Environmental Assessment (EA) on the proposed standards pursuant to the National Environmental Policy Act of 1969, as amended, Pub. L. 91–190, 40 U.S.C. 4221 et seq., and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500 through 1808). The EA addresses the possible incremental environmental effects attributable to the application of the proposed standards to the design of three types of covered products: dishwashers, clothes washers, and clothes dryers.

A Finding of No Significant Impact (FONSI) is published in today's **Federal Register.** The FONSI concludes that the proposed standards would result in no significant environmental impacts and that an environmental impact statement is not required.

The EA is part of the Technical Support Document and is available at the DOE Freedom of Information Reading Room at the address provided at the beginning of this notice.

b. Regulatory Impact Review

Executive Order 12291 (46 FR 13193, February 19, 1981) directs that, in proposing a major rule,[14] an agency perform a regulatory analysis. Such an analysis presents major alternatives to the regulation that could substantially achieve the same regulatory goal at lower cost, as well as a description of the costs and benefits (including potential net benefits) of the proposed rule.

DOE has determined that this proposed rule is a "major rule." Accordingly, a Draft Regulatory Impact Review has been prepared.

The Regulatory Analysis is summarized below. This summary focuses on the major alternatives considered in arriving at the proposed approach to improving the energy efficiency of consumer products. The

[14] "Major rule" means any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) 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.

reader is referred to the complete draft "Regulatory Impact Analysis," which is contained in the Technical Support Document, available as indicated at the beginning of this notice. It consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the economic impact of the proposed standard.

It should be noted at the outset that none of the alternatives that were examined for these three products saved as much energy as the proposed rule. Also, most of the alternatives would require that enabling legislation be enacted, since authority to carry out those alternatives does not presently exist.

Alternatives for Achieving Consumer Product Energy Conservation

Six major alternatives were identified by DOE as representing feasible policy alternatives for achieving consumer product energy efficiency. These alternatives include:

- No New Regulatory Action
- Informational Action

—Product labeling
—Consumer education

- Prescriptive Standards
- Financial Incentives

—Tax credits
—Rebates

- Voluntary Energy Efficiency Targets
- The Proposed Approach (Performance Standards)

Each alternative has been evaluated in terms of its ability to achieve significant energy savings at reasonable costs, and has been compared to the effectiveness of the proposed regulation.

If no new regulatory action were taken, then no new standards would be implemented for dishwashers, clothes washers, and clothes dryers. This is essentially the "base case" for each appliance. In this case, between the years 1993 and 2015 there would be expected energy use of 40.54 Quads of primary energy, with no energy savings and a zero net present value.

Several alternatives to the base case can be grouped under the heading of informational action. They include consumer product labeling and DOE's public education and information program. Both of these alternatives are mandated by the Act. One base case alternative would be to estimate the energy conservation potential of enhancing these programs. To model this possibility, the Department assumed that market discount rates would be lowered by five percent for purchasers of these three products. This resulted in energy savings equa1 to 2.32 Quads, with expected consumption equal to 38.22 Quads. The net present value is estimated to be $3.05 billion.

Another method of setting standards would entail requiring that certain design options be used on each product, i.e., prescriptive standards. For these three products, this involved assuming level 1 standards, i.e., improved food filters for dishwashers, elimination of warm rinse options for clothes washers, and temperature termination for clothes dryers. This resulted in energy consumption, between 1993 and 2015, of 38.95 Quads, and savings of 1.59 Quads. The net present value, in 1987 dollars, was $3.02 billion.

Various financial incentive alternatives were tested. These included tax credits and rebates to consumers, as well as tax credits to manufacturers. The tax credits to consumers were assumed to be 15 percent of the increased cost of higher energy efficiency features of these appliances, while the rebates were assumed to be 15 percent of the increase in equipment prices. The tax credits to consumers showed a sizable change from the base case, i.e., this alternative would save 2.30 Quads with a net present value of $3.22 billion. Consumer rebates also showed sizable changes; they would save 2.29 Quads with a net present value of $3.42 billion.

Another financial incentive that was considered was tax credits to manufacturers for the production of energy-efficient dishwashers, clothes washers, and clothes dryers. In this scenario, an investment tax credit (ITC) of 20 percent was assumed. The tax credits to manufacturers had almost no effect, since the energy consumption estimates are 39.99 Quads with savings equal to .55 Quad, and a net present value equal to $52 million.

The impact of this scenario is so small because the ITC was applicable only to the tooling and machinery costs of the firms, i.e., the firms' fixed costs, and most of the design improvements that would likely be adopted to manufacture more efficient versions of these products would involve purchased parts. Expenses for purchased parts would not be eligible for an ITC.

Two scenarios of voluntary energy efficiency targets were examined; in the first one, the proposed energy conservation standards were assumed to be voluntarily adopted by all the relevant manufacturers in five years, and, in the second scenario, the proposed standards were assumed to be adopted in 10 years. In these scenarios, the five year delay would result in energy consumption by these appliances of 39.19 Quads, energy savings of 1.35 Quads, and a net present value of $2.22 billion; the 10 year delay would result in 40.04 Quads of energy being consumed, .50 Quad being saved, and a net present value of $940 million.

These scenarios assume that there would be universal voluntary adoption of the energy conservation standards by these appliance manufacturers, an assumption for which there is no reasonable assurance.

Lastly, all of these alternatives must be gauged against the performance standards that are being proposed in this notice. Such performance standards would result in energy consumption of dishwashers, clothes washers, and clothes dryers to total an estimated 38.07 Quads of primary energy over the 1993–2015 time period. Savings would be 2.47 Quads, and the net present value would be an expected $4.83 billion.

As noted at the beginning of this section, none of the alternatives that were considered for these products would save as much energy as the proposed rule.

c. "Takings" Assessment Review

Executive Order 12630 (53 FR 8859, March 18, 1988) directs that, in proposing a regulation, an agency conduct a "takings" review. Such a review is intended to assist agencies in avoiding unnecessary takings and help such agencies account for those takings that are necessitated by statutory mandate.

For purposes of the Order:

"Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.

It appears that there are three parts of the appliance standards program that conceivably could be viewed as having "takings implications." These are testing and certification requirements, the impacts of standard levels, and possible DOE testing of products for validation.

With regard to the first part, namely, testing and certification, the Department believes that such a requirement, implementing a long-established statutory mandate in a manner calculated to minimize adverse

economic impacts, does not constitute a "taking" of private property.

Similarly, the Department's possible validation testing does not constitute a "taking," within the limitations described above.

Lastly, the impact of standards could be viewed by some as a "taking." Nevertheless, the Department believes that the fact that while an energy conservation standard may limit some manufacturers in the range of appliance efficiencies that they can produce, such narrowing of the energy efficiency range does not constitute a "taking" in the sense described above.

In short, in none of the three parts of the appliance standards program does the Department believe that the provisions of E.O. 12630 pertain.

d. Federalism Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

The Department believes that today's regulation, when finalized, would not have a substantial direct effect on State governments. Firstly, State regulations that may have existed on these three products were preempted by the Federal standards established in NAECA; secondly, States could have petitioned the Department for exemption from such preemption, and none has done that; lastly, today's regulation, when finalized, amends (or, in one case reaffirms) the Federal standards from NAECA.

e. Regulatory Flexibility Review

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires an assessment of the impact of proposed regulations on small businesses. Small businesses are defined as those firms within an industry that are privately owned and less dominant in the market.

In this rulemaking, three different products and, hence, industries, are being addressed. Regulatory flexibility issues will be discussed for the dishwasher, clothes washer, and clothes dryer industries for which standards are being proposed.

First, the energy conservation standard of an improved food filter on those dishwasher manufacturers, who could be considered small businesses, will be discussed.

Dishwasher manufacturing firms may be divided into two groups: those that compete on large sales-volume products and those that compete in small, specialized markets. Small firms are generally forced to specialize in small market niches that offer some protection from the cost advantage that large firms hold when they can produce in volume. This effect can even be observed among the major producers in the tendency of the smaller major producers to produce somewhat more specialized products.

There are significant differences among the major firms. As learned from discussions with industry consultants, average cost decreases with firm size. Thus, the industry has economies of scale, and large firms (to the extent that their facilities are up-to-date) have lower average costs than small firms. This fact, coupled with increasing competitiveness of the national and international markets, probably accounts for the continuing consolidation that has been occurring for several decades. The fact that the consolidation has been producing larger firms strongly corroborates the finding that large firms have a cost advantage.

A principal implication of consolidation is that the smaller of the major firms will be, on average, in more danger of failing or being bought out than will the large firms. Because of the greater precariousness of smaller firms, any decrease in average profitability is more likely to damage seriously a smaller firm, and an increase in average profitability is more likely to mean the difference between success and failure for a smaller firm.

From the point of view of competitiveness, a decrease in average profitability could speed up the process of consolidation, producing a less competitive industry, while an increase in average profitability could help maintain the current levels of competition. Either effect might well be temporary, because, in the long-run, the number of firms should be determined by the industry's cost structure and by the way a single firm's elasticity of demand relates to the number of competing firms.

Although larger firms have a cost advantage due to economies of scale, the very small firms in the dishwasher manufacturing industry have found market niches in which to survive profitably. The small firms sell dishwashers primarily to the replacement and kitchen remodel markets, which tend to offer higher profit margins than does the builder market. As a result, it is possible, according to industry consultants, that small firms would have an easier time passing through increased variable costs that result from the proposed standard, and thus may be affected more positively than the large firms.

Therefore, the fact that this energy conservation standard on dishwashers is not likely to "have a significant economic impact on a substantial number of small entities" suggests that the provisions of section 605.(b) of the Regulatory Flexibility Act pertain. These provisions state that neither an initial nor a final regulatory flexibility analysis need be performed for a proposed or final rule "if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

Secondly, the proposed energy conservation standards on clothes washer manufacturers needs to be addressed. The proposed standard is an efficiency level that was achieved by the elimination of a warm rinse option. For those manufacturers who choose to meet the standard by eliminating that option, there will be essentially a zero cost increase resulting from the standard. Consequently, since this standard may have no effect on any manufacturer, large or small, the Department believes that in this industry, too, the provisions of section 605.(b) of the Regulatory Flexibility Act pertain.

Lastly, the proposed energy conservation standards on electric clothes dryer manufacturers need to be addressed. It is not at all clear that the prescriptive standard levels being proposed will "have a significant economic impact on a substantial number of small entities." The LBL–MIM indicates, through its prediction on an increase in typical ROE, that the proposed standards are likely to slow down the consolidation process temporarily. This would lead to a temporary slowing down of the continuing decrease in this industry's competitiveness. However, this prediction would be tempered by the observation that if standards were technologically difficult to meet they could hurt some smaller firms the most, since smaller firms tend to have less sophisticated research and development capabilities. This should not be a serious consideration for regulatory flexibility, since the proposed standard levels on clothes dryers will not be technologically difficult to meet.

Therefore, since the prescriptive standards that are being proposed are expected to increase the clothes dryer

manufacturers' ROE, and slow down the industry's consolidation, the Department believes that section 605.(b) of the Regulatory Flexibility Act pertains here, also.

Thus, for each of these three industries, the Department is concluding that the proposed standard level will not "have a significant economic impact on a substantial number of small entities," and that preparation of neither an initial nor a final regulatory flexibility analysis need be performed. DOE welcomes comments on this conclusion.

V. Public Comment Procedures

a. Participation in Rulemaking.

DOE encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers, associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposal. The Department also encourages interested persons to participate in the public hearing to be held in Washington, DC, at the time and place indicated at the beginning of this notice.

The DOE has established a comment period of 60 days following publication of this notice for persons to comment on this proposal. All public comments received and the transcript of the public hearing will be available for review in the DOE Freedom of Information Reading Room.

b. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below.

Comments should be labeled both on the envelope and on the documents, "Three Products Rulemaking (Docket No. CE–RM–88–101)," and must be received by the date specified at the beginning of this notice. Ten copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed regulation.

All written comments received on the proposed rule will be available for public inspection at the Freedom of Information Reading Room, as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and 10 copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat information as confidential include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. Public Hearing

1. *Procedure for Submitting Requests to Speak.* The time and place of the public hearing are indicated at the beginning of this notice. DOE invites any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, to make a written request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, "Three Products Rulemaking (Docket No. CE–RM–88–101)," and should be sent to the address, and must be received by the time specified, at the beginning of this notice. Requests may be hand-delivered or telephoned in to such address between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted. Each person selected to be heard will be so notified by DOE as to the time they will be speaking.

Each person selected to be heard is requested to submit 10 copies of the statement at the beginning of the hearing. In the event any persons wishing to testify cannot meet this requirement, that person may make alternative arrangements with the Office of Hearings and Dockets in advance by so indicating in the letter requesting to make an oral presentation.

2. *Conduct of Hearing.* DOE reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 533 and section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit, to the presiding official, written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Further questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question, with respect to disputed issues of material fact, other interested persons who made oral presentations, as well as employees of the United States Government who have made written or oral presentations, relating to the proposed rule. This opportunity will be afforded after any rebuttal statements, to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of disputed issues of material fact. If the time provided is insufficient or inconvenient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any

rebuttal statements and be prepared to state specific justification, including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

d. Issues Requested for Comment

As discussed above in today's notice, DOE has identified a number of issues where comments are requested. These issues include, but are not limited to the following:

- The baseline units and the base cases;
- Market share elasticities;
- Usage elasticities;
- Appropriate discount rates, including those for consumer analyses (LCC and LBL–REM) and the use of a social discount rate (LBL–REM);
- Energy price forecasts;
- The characterization of prototypical firms for the manufacturer impact analysis (LBL–MIM);
- Efficiency forecasts for these three products;
- Any lessening of product utility, especially with respect to the elimination of warm water rinse in clothes washers;
- The effects on forecasts due to the use of national average energy prices and usage rates;
- The effects of standards on manufacturer's incentives to develop innovative products and product features; and
- Any uncertainties in modeling especially product usage, e.g., changes in usage rates as shown by survey data or changes in usage of features such as no-heat dry options on dishwashers.

In consideration of the foregoing, it is proposed to amend Part 430 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, DC, July 13, 1989.

John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

The authority citation for Part 430 continues to read as follows:

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title IV, Part 2, National Appliance Energy Conservation Act of 1987, and National Appliance Energy Conservation Amendments of 1988 (42 U.S.C. 6291–6309).

* * * * *

2. Section 430.32 is amended by revising paragraphs (f), (g), and (h) to read as follows:

§ 430.32 Energy conservation standards.

The energy conservation standards for the covered product classes are:

* * * * *

(f) *Dishwashers.*

Product class	Energy factor (loads/kWh) effective January 1, 1993
1. Compact Dishwasher (115V).	0.58.
2. Standard Dishwasher (115V).	0.41.
3. Water Heating Dishwasher, Compact (115V).	Must be equipped with option to dry without heat.
4. Water Heating Dishwasher, Standard (115V).	0.44.
5. Water Heating Dishwasher, Compact (220V).	Must be equipped with option to dry without heat.
6. Water Heating Dishwasher, Standard (220V).	Must be equipped with option to dry without heat.

(g) *Clothes washers.*

Product class	Energy factor (cu. ft./kWh/cycle) effective January 1, 1993
1. Top Loading, Compact (1.6 ft.^{3} capacity or less).	Must have an unheated rinse option to 1.02 cu. ft./kWh/cycle.
2. Top Loading, Standard (1.61 to 2.74 ft.^{3} capacity or greater).	Must have an unheated rinse option to 1.32 cu. ft./kWh/cycle.
3. Top Loading, Large (2.75 ft.^{3} capacity or greater).	Must have an unheated rinse option to 1.21 cu. ft./kWh/cycle.
4. Top Loading, Semi-Automatic.	Must have an unheated rinse option.
5. Front Loading	Must have an unheated rinse option.
6. Suds Saver	Must have an unheated rinse option.

(h) *Clothes dryers.*

Product class	Requirement—January 1, 1993
1. Electric, Standard	Shall have moisture or temperature termination.
2. Electric, Compact (120V).	Shall have moisture or temperature termination.
3. Electric, Compact (240V).	Shall have moisture or temperature termination.
4. Electric Heat Pump [Reserved].	
5. Gas, Standard	Shall have moisture or temperature termination.
6. Gas, Compact	Shall have moisture or temperature termination.

* * * * *

[FR Doc. 89–18537 Filed 8–8–89; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[Docket Number CE-RM-88-101]

Energy Conservation Program for Consumer Products

AGENCY: Department of Energy.

ACTION: Finding of No Significant Impact (FONSI) for Candidate Energy Conservation Standards for Dishwashers, Clothes Washers and Clothes Dryers.

SUMMARY: The Energy Policy and Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act (NECPA) and the National Appliance Energy Conservation Act (NAECA), prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE) to administer an energy conservation program for these products. As a general matter, these federal standards preempt State and local standards and any other State and local requirements with respect to energy efficiency or energy use of these products. Among other things, NAECA requires DOE to consider amending the energy conservation standards for dishwashers, clothes washers and clothes dryers.

Based on an Environmental Assessment (EA), (DOE/EA-0386), DOE has determined that the proposal of any of the candidate amended energy efficiency standards for dishwashers, clothes washers and clothes dryers would not be a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). Therefore an Environmental Impact Statement is not required.

Public Availability: The EA is published within the Technical Support Document for the range of candidate amended energy efficiency standards and is available on request at the following address: Hearings and Dockets Branch, Office of Conservation and Renewable Energy, U.S. Department of Energy, Docket Number CE-RM-88-101, 1000 Independence Avenue. SW., Room 6B-025. CE-43.1 Washington, DC 20585 (202) 586-9320.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy (CE-132), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Donald E. Henninger, U.S. Department of Energy, Office of NEPA Project Assistance (EH-25), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2410.

Martha S. Crosland, U.S. Department of Energy, Office of General Counsel (GG-11), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6947.

SUPPLEMENTARY INFORMATION: DOE prepared an Environmental Assessment (DOE/EA-0386) on the candidate standards for amended energy-efficiency standards pursuant to the National Environmental Policy Act of 1969, as amended, Pub. L. 91-190, 40 U.S.C. 4221 et seq., and the implementing regulations of the Council on Environmental Quality [40 CFR Parts 1500-1508]. The EA addresses the possible incremental environmental effects attributable to the application of a range of candidate amended standards (in the form of engineering changes) to the design of dishwashers, clothes washers, and clothes dryers. The effects of the candidate amended standards range from no change to a slight improvement in the environment as discussed in the General Findings below.

Approach Used in the Analysis

The EA evaluates the environmental impacts resulting from the proposed setting of a range of amended energy-efficiency standards for dishwashers, clothes washers, and clothes dryers in accordance with the NAECA. A complete description of the Engineering and Economic Analysis of the range of amended standards may be found in the Technical Support Document (TSD).

The main environmental concern addressed is emissions from fossil fueled electricity generation. Each of the design options for dishwashers, clothes washers and clothes dryers would result in decreased electricity use and, therefore, reduced powerplant emissions. The proposed efficiency standards would decrease air pollution by decreasing future energy demand. The greatest decreases in air pollution would be in sulfur oxides.

Some design options for dishwashers would also reduce water consumption, resulting in lower in-house emissions from fuel-burning water heaters.

An in-depth analysis of particulate emissions is not included in the EA because particulate emissions are minor compared to sulfur and nitrogen oxide emissions. For example, in 1984 power plants contributed only 7 percent of U.S. total particulate emissions as compared to contributions of 83 percent and 34 percent of total SO_2 and NO_2 emissions, respectively (EPA, 1986)

General Findings

1. Dishwashers

The greatest environmental impacts of the candidate standards would result from generating less electricity. Power plants' main environmental effects on air and water result from emissions of sulfur oxides (SO_x), nitrogen oxides (NO_x), and carbon dioxide (CO_2). All SO_x and NO_x emissions are expressed in the equivalent weights of SO_2 and NO_2, respectively. Carbon dioxide emissions are commonly expressed as tons of carbon. General findings are summarized below.

A. Sulfur Dioxide

The greatest decrease in air pollution would occur for sulfur dioxide. The range of expected reductions from the candidate standards is from 4,442 tons, or 0.03 percent of the U.S. SO_2 emissions expected to be emitted by power plants in the year 2010, to a level of 9,523 tons, or 0.06 percent of the expected U.S. power plant emissions of SO_2 in 2010.

B. Nitrogen Dioxide

The expected reductions in NO_2 from the candidate standard levels range from 3,299 tons, or 0.03 percent of the total NO_2 emissions expected to be emitted by power plants in the year 2010, to a level of 6,869 tons, or 0.07 percent of the expected U.S. power plant emissions of NO_2 in 2010.

C. Carbon Dioxide

The expected reductions in CO_2 from the candidate standard levels range from the equivalent of 350,000 tons, or 0.02 percent of the total CO_2 emissions expected to be emitted in the U.S. in the year 2010, to a level of 704,000 tons, or 0.04 percent of expected U.S. emissions of CO_2 in 2010.

The candidate dishwasher standards would also save 197 billion to 276 billion gallons of water during the 1993-2015 time period.

None of the environmental impacts from the savings of SO_2, NO_2, or CO_2 from the candidate standards is considered to be significant.

2. Clothes Washers

The greatest environmental impact of the candidate standards for clothes washers would be a decrease in electricity consumption. General findings are summarized below:

A. Sulfur Dioxide

The expected reductions in SO_2 from the candidate standard levels range

from 8,943 tons, or 0.05 percent of the expected U.S. power plant emissions of SO_2 in 2010, to a level of 21,528 tons or 0.13 percent of the U.S. SO_2 emissions expected to be emitted by power plants in the year 2010.

B. Nitrogen Dioxide

The expected reductions in NO_2 from the candidate standard levels range from 6,759 tons, or .07 percent of the U.S. NO_2 emissions expected to be emitted by power plants in the year 2010, to a level of 15,875 tons, or 0.16 percent of 2010 emissions of NO_2 from U.S. power plants.

C. Carbon Dioxide

The expected reductions in CO_2 from the candidate standard levels range from 736,000 tons, or 0.04 percent of the expected CO_2 emissions in the U.S. in 2010, to a level of 1,677,000 tons, or C.09 percent of the CO_2 emissions expected in the U.S. in the year 20l0.

The environmental impacts from the savings of SO_2, NO_2, or CO_2 from the candidate standards are considered to be insignificant.

3. Clothes Dryers

The greatest impact of the candidate standard levels for clothes dryers is a decrease in electricity consumption. General findings are summarized below:

A. Sulfur Dioxide

The expected reductions in SO_2 from the candidate standard levels range from 10,552 tons, or 0.06 percent of the SO_2 emissions expected from U.S. power plants in the year 2010, to a level of 38,230 tons, which would represent 0.22 percent of SO_2 emissions by U.S. power plants in 2010.

B. Nitrogen Dioxide

The expected reductions in NO_2 from the candidate standard levels range from 7,020 tons, or 0.07 percent of the U.S. NO_2 emissions expected to be emitted by U.S. power plants in the year 2010, to a level of 25,641 tons, representing 0.25 percent of NO_2 emissions by U.S. power plants in 2010.

C. Carbon Dioxide

The expected reductions in CO_2 from the candidate standard levels range from 638,000 tons, or 0.04 tons of the CO_2 emissions expected to be emitted in the U.S. in the year 2010, to a level of 2,398,000 tons, or 0.13 percent of U.S. emissions of CO_2 in 2010.

The environmental impacts from the savings of SO_2, NO_2, or CO_2 from the candidate standards are considered to be insignificant.

In conclusion, no levels of the candidate standards for the appliances, individually or cumulatively, would result in significant reductions of SO_2, NO_2, or CO_2 and therefore none would result in significant environmental impacts.

Determination

Based upon the EA, DOE has determined that the proposal of any of the candidate amended energy-efficiency standards for dishwashers, clothes dryers and clothes washers would not constitute a major federal action significantly affecting the quality of the human environment, within the meaning of NEPA. Therefore, an Environmental Impact Statement is not required.

Issued in Washington, DC, May 30, 1989.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89–18538 Filed 8–8–89; 8:45 am]

BILLING CODE 6450-01-M

federal register

Wednesday
August 9, 1989

Part III

Department of Education

34 CFR Part 345

State Grants Program for Technology-Related Assistance for Individuals With Disabilities; Rule

DEPARTMENT OF EDUCATION

34 CFR Part 345

RIN 1820-AA84

State Grants Program for Technology-Related Assistance for Individuals With Disabilities

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary announces final regulations to implement the Technology-Related Assistance for Individuals with Disabilities Act of 1988. The regulations implement Title I of the Act, a program of State grants for the development of consumer-responsive statewide programs of technology-related assistance for individuals with disabilities. The rules state the purposes of the program, the types of activities that may be supported, application requirements, the selection criteria by which the Secretary evaluates applications, and the requirements that must be met by States that receive grants under the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland; Telephone: (202) 732-1139; deaf or hearing-impaired persons who use telecommunication devices for the deaf (TDD) may call (202) 732-1198.

SUPPLEMENTARY INFORMATION: In August 1988, Congress passed, and the President signed, the Technology-Related Assistance Act for Individuals with Disabilities (Pub. L. 100-407). The Act is based upon the finding that advances in modern technology can enable some persons with disabilities to have greater control over their own lives, to enhance their participation in education, employment, family, and community activities, and to otherwise benefit from opportunities that are commonly available to individuals who do not have disabilities. Title I of the Act, the subject of these final regulations, authorizes financial assistance to States to help each State develop a consumer-responsive, statewide program of technology-related assistance for individuals with disabilities.

The regulations incorporate the seven statutory purposes of the program and provide that a State must address each of these purposes in its consumer-responsive, comprehensive statewide program. The regulations further provide that, in accordance with the statutory requirements, the Governor must designate a single responsible entity to apply for a grant and administer the activities under the grant, and must designate a public agency to receive and disburse the funds and maintain fiscal controls.

From time to time, the Secretary will publish a notice in the **Federal Register** requesting applications for development grants. In an application for a development grant, a State must provide, among other things, a preliminary assessment of its need for technology-related assistance and a description of its existing efforts to establish a consumer-responsive, comprehensive statewide system for the delivery of technology-related assistance. Each State must also state the goals and objectives of its proposed program under the development grant. A development grant will be awarded for a three-year period.

The Secretary will refer complete applications to one or more groups of expert peer reviewers, which will evaluate the applications according to the selection criteria in § 345.31. The Secretary will seek the involvement as members of the peer review panels individuals with disabilities, family members of individuals with disabilities, and others who have expertise, by reason of training or personal experience, in such areas as the provision of technology-related services or assistive devices; public administration; development and implementation of public systems; evaluation of service delivery programs; education, training, and public information; development and maintenance of information systems; provision of services to individuals with disabilities and their families; health care and benefits administration; use of assistive technology; and other relevant and appropriate areas.

The selection criteria for applications for development grants, which are detailed in the regulations at § 345.31, include the extent to which a State: demonstrates a comprehensive assessment of the need for a statewide, consumer-responsive program; presents measurable goals and objectives that address the stated needs; presents a plan of activities that is likely to accomplish the goals and objectives; presents an adequate management plan, including staffing, resource deployment, and coordination; presents an adequate plan of evaluation; describes substantive roles for individuals with disabilities or their families or representatives in the development and implementation of the State's program under the grant; and describes extensive coordination among appropriate State, public, and private agencies in all phases of the project.

In the third year of its development grant, a State may apply for an extension grant. In its application for an extension grant, a State must include a followup needs assessment and a description of the activities and accomplishments under the development grant. States are required to collect data and document the extent to which they have made progress toward the goals specified in the application for the development grant. An application for an extension grant also must include an assessment of the degree of satisfaction of individuals with disabilities, their families or representatives, public and private service providers, employers, and other appropriate individuals with the activities under the development grant and with their involvement in the development and implementation of the statewide program of technology-related assistance under the grant.

The Secretary may award extension grants to States that have made significant progress under the development grant. Applications for extension grants will be evaluated based on the application that is submitted and the Secretary's assessment of the extent to which the State made significant progress toward achieving the goals and objectives under its development grant.

The regulations provide that the Secretary will base the assessment of progress on the results of a site visit to the State's program and the documentation of progress the State has presented in its extension grant application.

The rules clarify the obligations of a grantee with respect to fiscal accountability, reporting, and cooperation with the Secretary in the discharge of the Secretary's responsibilities under this program.

Finally, the rules outline the penalties to which a State may be subject if it violates the requirements of this part. There are no program-specific appeals procedures in this part because general Department of Education procedures governing the withholding and recovery of funds apply to any State that is found to be in noncompliance with the requirements of this program as a result of a site visit or failure to supply

relevant information that the Secretary requires.

The Department of Education's responsibilities under this Act will be administered by the National Institute on Disability and Rehabilitation Research (NIDRR), created under Title II of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602, 98–221, and 99–506. The administration of the program will be governed generally by the Education Department General Administrative Regulations (EDGAR), with certain specific exceptions. In specifying the regulations that apply to this program, the Secretary has excluded 34 CFR 80.32(a) and 34 CFR 80.33(a) because the statute specifically encourages transfer of title to equipment and supplies, and § 75.618 because the statute authorizes grantees to lease equipment.

On April 12, 1989, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** at 54 FR 14773.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, the Department received 20 letters of comment. An analysis of the comments and of the changes in the regulations since the publication of the NPRM is published as an appendix to these final regulations. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. Because these regulations would affect only States and entities designated to act on behalf of States, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 345

Administrative practice and procedure, Education, Educational research, Grant programs—education, Handicapped, Reporting and recordkeeping requirements.

Dated: July 5, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.224, National Institute on Disability and Rehabilitation Research)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 345, to read as follows:

PART 345—STATE GRANTS PROGRAM FOR TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

Subpart A—General

Sec.

345.1 What is the State Grants Program for Technology-Related Assistance for Individuals with Disabilities?
345.2 What are the purposes of the State grants program for technology-related assistance for individuals with disabilities?
345.3 What are the types of awards under this program?
345.4 Who is eligible to receive assistance under this program?
345.5 What regulations apply to this program?
345.6 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under this Program?

345.10 What are the functions of projects funded under this program?
345.11 What types of activities are authorized under this program?

Subpart C—How Does a State Apply for a Grant?

345.20 What is the content of an application for a development grant?
345.21 What is the content of an application for an extension grant?

Subpart D—How Does the Secretary Make a Grant?

345.30 How does the Secretary evaluate an application for a development grant under this program?
345.31 What selection criteria are used for development grants under this program?
345.32 What other factors does the Secretary take into consideration in making development grant awards under this program?
345.33 What is the review process for an application for an extension grant?

Subpart E—What Conditions Must Be Met After an Award?

345.40 What are the reporting requirements for the recipient of a development grant?
345.41 What are the reporting requirements for the recipient of an extension grant?
345.42 Who retains title to technology devices provided under this program?
345.43 What are the requirements for grantee participation in the Secretary's progress assessments?
345.44 What are the restrictions on the use of funds under this program?
345.45 What is the relation between this program and related assistance under other programs?
345.46 What are the requirements for participation in the Secretary's evaluation of this program?

Subpart F—What Compliance Procedures May the Secretary Use?

345.50 Who is subject to a corrective action plan?
345.51 What penalties may the Secretary impose on a grantee that is found not to be in compliance?

Authority: 29 U.S.C. 2201–2271, unless otherwise noted.

Subpart A—General

§ 345.1 What is the State Grants Program for Technology-Related Assistance for Individuals with Disabilities?

This program provides financial assistance to States to assist each State to develop and implement a consumer-responsive, comprehensive statewide program of technology-related assistance for individuals with disabilities that accomplishes the purposes described in § 345.2.

(Authority: 29 U.S.C. 2211(a))

§ 345.2 What are the purposes of the State grants program for technology-related assistance for individuals with disabilities?

The purposes of this program are to create and support consumer-responsive, comprehensive, statewide programs of technology-related assistance that are designed to increase—

(a) Awareness of the needs of individuals with disabilities for assistive technology devices and assistive technology services;

(b) Awareness of policies, practices, and procedures that facilitate or impede the availability or provision of assistive technology devices and assistive technology services;

(c) The availability of and funding for the provision of assistive technology

devices and assistive technology services for individuals with disabilities;

(d) Awareness and knowledge of the efficacy of assistive technology devices and assistive technology services among individuals with disabilities, their families or representatives, individuals who work for public agencies and private entities that have contact with individuals with disabilities (including insurers), employers, and other appropriate individuals;

(e) The capacity of public and private entities to provide technology-related assistance, particularly assistive technology devices and assistive technology services, and to pay for the provision of assistive technology devices and assistive technology services;

(f) Coordination among State agencies and public and private entities that provide technology-related assistance, particularly assistive technology devices and assistive technology services; and

(g) The probability that individuals of all ages with disabilities will, to the extent appropriate, be able to secure and maintain possession of assistive technology devices as they make the transition between services offered by human service agencies or between settings of daily living.

(Authority: 29 U.S.C. 2201(b)(1))

§ 345.3 What are the types of awards under this program?

Under this program, the Secretary—

(a) Awards three-year development grants to assist States in developing and implementing statewide programs that accomplish the purposes in § 345.2; and

(b) May award a two-year extension grant to any State that demonstrates significant progress under the development grant in developing and implementing a statewide program that accomplishes the purposes in § 345.2.

(Authority: 29 U.S.C. 2212 (a) and 2213(a))

§ 345.4 Who is eligible to receive assistance under this program?

(a) A State is eligible to receive a grant under this program, providing that the Governor has designated—

(1) An office, agency, entity, or individual to be responsible for preparing the application and carrying out the purposes and activities of the program under the grant; and

(2) A public agency to be responsible for receiving and disbursing to that office, agency, entity, or individual the funds received under the program and maintaining fiscal accountability and responsibility.

(b) A State that is receiving funding for a third year under a development grant may apply for an extension grant, pursuant to § 345.21.

(Authority: 29 U.S.C. 2212 (a) and (e)(1) and 2213(a))

§ 345.5 What regulations apply to this program?

The following regulations apply to the State Grants Program for Technology-Related Assistance for Individuals with Disabilities:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs) except § 75.618, Part 77 (Definitions That Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), except §§ 80.32(a) and 80.33(a), Part 81 (General Education Provisions Act—Enforcement), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(b) The regulations in this Part 345.

(Authority: 29 U.S.C. 2201–2217)

§ 345.6 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Nonprofit
Nonpublic
Private
Project
Project period
Public

(b) *Definitions in the Technology-Related Assistance for individuals with Disabilities Act of 1988.* The following terms used in this part are defined in section 3 of the Act:

Assistive technology device
Assistive technology service
Individual with disabilities
Institution of higher education
Secretary
State
Technology-related assistance
Underserved group

(c) *Other definitions.* The following definition also applies to this part:

"Major life functions" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(Authority: 29 U.S.C. 2201–2217)

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 345.10 What are the functions of projects funded under this program?

The following functions may be carried out by States in accomplishing the purposes described in § 345.2:

(a) Identification of individuals with disabilities, including individuals from underserved groups, residing in the State, and an ongoing assessment of the needs of those individuals with disabilities for technology-related assistance, which may be based on existing data.

(b) Identification and coordination of Federal and State policies, resources, and services related to the provision of technology-related assistance to individuals with disabilities, including entering into interagency agreements.

(c) Provision to individuals with disabilities of assistive technology devices and services that will mitigate the effects of those disabilities, and payment for these devices and services.

(d) Dissemination of information about technology-related assistance and funding sources for assistive technology devices and services to individuals with disabilities, their families or representatives, employers, individuals who work for public agencies or private entities that have contact with individuals with disabilities (including insurers), and other appropriate individuals.

(e) Provision of training and technical assistance related to assistive technology devices and services to individuals with disabilities, their families or representatives, employers, and individuals who work for public agencies or private entities that have contact with individuals with disabilities (including insurers), and other appropriate individuals.

(f) Conduct of a public awareness program focusing on the efficacy and availability of assistive technology services and devices for individuals with disabilities.

(g) Provision of assistance to statewide and community-based organizations that provide assistive technology services to individuals with disabilities.

(h) Support for the establishment or continuation of partnerships and cooperative initiatives between public

agencies and both nonprofit and for-profit entities to facilitate the development and implementation of a statewide program of technology-related assistance for individuals with disabilities.

(i) Actions to develop standards or, as appropriate, apply existing standards to ensure the availability of qualified personnel.

(j) Compilation and evaluation of appropriate data relating to the program.

(k) The establishment of procedures providing for the active involvement of individuals with disabilities, their families or representatives, and other appropriate individuals in the development and implementation of the program, and for the active involvement, to the maximum extent appropriate, of individuals with disabilities who use assistive technology devices and assistive technology services in decisions relating to these assistive technology devices and assistive technology services.

(l) Any other functions approved by the Secretary that further the purposes in § 345.2.

(Authority: 29 U.S.C. 2211(b))

§ 345.11 What type of activities are authorized under this program?

In carrying out the purposes described in § 345.2 and the functions described in § 345.10, a State may undertake one or more of the following activities:

(a) Develop and implement model systems for the delivery of assistive technology devices and services to individuals with disabilities that, if successful, could be replicated or made generally applicable, and that may include—

(1) The purchase, lease, or other acquisition of assistive technology devices and services, or payment for the provision of assistive technology devices and services;

(2) The provision of counselors, including peer counselors, to assist individuals with disabilities and their families to obtain assistive technology devices and services;

(3) Provisions for the involvement of individuals with disabilities or, if appropriate, their families or representatives in the development and operation of the model delivery system; and

(4) The evaluation of the efficacy of the model service delivery system.

(b) Conduct a statewide needs assessment, which may be based on existing data and may include—

(1) Estimates of the number of individuals with disabilities within the State, categorized by residence, type and extent of disabilities, age, race, gender, and ethnicity;

(2) A description of the efforts during fiscal year 1987 to provide technology-related assistance to individuals with disabilities, including the devices and services provided and the number and types of individuals receiving appropriate devices and services;

(3) An estimate of the number of individuals with disabilities who are in need of assistive technology devices and services and a description of the types of assistance needed;

(4) An estimate of the cost of providing technology-related assistance to all individuals with disabilities who need technology-related assistance;

(5) A description of State and local public and private resources, including insurance, available to establish a statewide program of technology-related assistance;

(6) The identification of State and Federal policies that facilitate or interfere with the operation of a statewide system of technology-related assistance;

(7) A description of alternative State-financed systems to subsidize the provision of technology-related assistance, including loans for assistive technology devices, a low-interest loan fund, a revolving fund, a loan insurance program, or a partnership with private entities for the purchase, lease, or other acquisition of assistive technology devices and services, and a description of the eligibility criteria under these alternative systems;

(8) A description of the State's procurement policies and the extent to which those policies will ensure, to the extent practicable, the compatibility of assistive technology devices supplied as a result of this program with technology designed for general use by those in the population who are not disabled; and

(9) An inquiry into whether it is advantageous for either a State agency or a task force comprised of representatives from both the State and the private sector to study the practices of private companies offering health and disability insurance in the State with regard to the purchase, lease, or other acquisition of assistive technology devices and use of assistive technology services.

(c) Conduct or support a public awareness program designed to provide information on the efficacy and availability of assistive technology devices and services to individuals with disabilities, their families or representatives, individuals who work for public agencies and private entities that have contact with individuals with disabilities (including insurers), employers, and other appropriate individuals that may include—

(1) The development and dissemination of information relating to the nature of assistive technology devices and services including their cost, appropriateness, availability, and means of access, and the efficacy of assistive technology devices and services in enhancing the capacities of individuals with disabilities;

(2) Procedures for providing direct communication between public and private providers, including employers, of assistive technology devices and services; and

(3) The development and dissemination of information relating to the use of the public awareness program by individuals with disabilities, their family members or representatives, professionals who work in the field of technology-related assistance, and other appropriate individuals, and the nature of the inquiries these individuals have made.

(d) Encourage the creation of or support for the maintenance of a program of support groups among statewide or community-based organizations or systems that assist individuals with disabilities to use assistive technology devices or services.

(e) Provide or support a program of training and technical assistance relating to the use of assistive devices and assistive technology services to individuals with disabilities, their families or representatives, individuals who work for public agencies or private entities that have contact with individuals with disabilities, insurers, employers, and other appropriate individuals.

(f) Develop, operate, or expand a system for public access to information about technology-related assistance that may—

(1) Include information about assistive technology devices and services, and about the availability, costs, and sources of funds, and the individuals, organizations, and agencies capable of providing technology-related assistance to individuals with disabilities;

(2) Identify and classify existing funding sources, and conditions of and criteria for access to those sources, including any funding mechanisms or strategies developed by the State;

(3) Develop, compile, and categorize a catalog of print, braille, audio, video, captioned video, and other materials in various media that contain the information described in § 345.11(f)(1) so as to ensure accessibility to individuals with sensory and cognitive disabilities;

(4) Identify existing support groups and systems available to assist individuals with disabilities to make effective use of technology-related assistance; and

(5) Maintain a record of the extent to which citizens of the State use or make inquiries of this information system, and the nature of their inquiries.

(g) Develop cooperative agreements with other States to expand the capacity of the States to assist individuals of all ages with disabilities to learn about, acquire, use, maintain, adapt, and upgrade assistive technology devices and assistive technology services that these individuals need at home, school, work, or other environments that are part of daily living.

(h) Conduct any other activities necessary to developing, implementing, or evaluating the statewide program of technology-related assistance.

(Authority: 29 U.S.C. 2211(c))

Subpart C—How Does a State Apply for a Grant?

§ 345.20 What is the content of an application for a development grant?

(a) Applicants for development grants under this program shall include the following information in their applications:

(1) The designation by the Governor of the State of the office, agency, entity, or individual responsible for preparing the application; administering and supervising the use of amounts made available under the grant; planning and developing the statewide program of technology-related assistance; ensuring coordination between public and private agencies, including the entering into of interagency agreements; ensuring active, timely, and meaningful participation by individuals with disabilities and their families or representatives, and other appropriate individuals with respect to performing functions and carrying out activities under the grant; and delegating any of these responsibilities to one or more appropriate agencies, entities, or individuals.

(2) A description of the nature and extent of involvement of various State agencies in the preparation of the application and of their continuing role in the development of the statewide program of technology-related assistance.

(3) A description of the nature and extent of involvement of individuals not employed by any State agency, including individuals with disabilities, their families or representatives, and other appropriate individuals in the development of the application and the continuing role of these individuals in the development of the statewide program under the grant.

(4) A preliminary assessment of the needs of individuals with disabilities in the State, including individuals from underserved groups, and individuals in various geographic areas of the State for assistive technology services, devices, and support.

(5) A description of the State's current and previous efforts to develop a statewide program of technology-related assistance and an assessment of the effectiveness of those efforts.

(6) A description of the objectives, functions, goals, and activities planned under the grant and the expected outcomes at the end of the grant period with respect to a consumer-responsive statewide program consistent with the purposes of the program stated in § 345.2.

(7) A description of the State's and other resources that can be committed to the development of the statewide program, including a description of the types of collaborative relationships that will be developed among public and private entities in the State to further the purposes of the grant.

(8) A description of the procedures used for compiling information for the application and of the procedures that the State will use to collect information and conduct evaluations of progress and accomplishments under the grant.

(9) A description of State policies and procedures governing contracts, grants, and other arrangements with public and private entities and individuals for the purpose of developing a statewide system and providing assistive technology devices and services under the grant that will indicate that a State's policies and procedures are adequate to ensure appropriate fiscal accounting, recordkeeping and reporting, and program accountability by all parties receiving funds under the grant.

(b) Applicants for development grants shall include the following assurances in their applications:

(1) An assurance that, to the extent practicable, devices and services provided under the grant will be equitably distributed among all geographic areas of the State.

(2) An assurance that title to devices purchased with grant funds, including through subgrants or contracts, will be held by public agencies or will be transferred to the disabled individual or to a family member or guardian in accordance with the provisions of § 345.42.

(3) An assurance that funds received under the grant—

(i) Will be expended in accordance with the provisions of Title I of the Technology-Related Assistance for Individuals with Disabilities Act of 1988 and the regulations in this part;

(ii) Will be used to supplement amounts available from other sources for technology-related assistance;

(iii) Will not be used to pay a financial obligation for technology-related devices or services that would otherwise have been paid from other sources, unless that payment is made to prevent a delay in receipt of technology-related assistance by an individual and is subsequently reimbursed in full; and

(iv) Will not be used to supplant related assistance available under the Social Security Act (Titles II, V, XVI, XVIII, XIX, or XX), the Education of the Handicapped Act, the Rehabilitation Act of 1973, or laws pertaining to veterans benefits.

(4) An assurance that the State will adopt such fiscal control and accounting procedures as may be necessary to ensure proper disbursement of and accounting for funds under the grant, and that a public agency will control and administer all funds received under the grant and will not commingle monies received under the grant with State or other funds.

(5) An assurance that the State will make available information concerning technology-related assistance to individuals with disabilities and their families or representatives in a form that will enable those individuals to make effective use of the information; in preparing information for dissemination, will consider the needs of individuals with sensory and cognitive impairments; and will consider the provision of information through a variety of formats, including audio cassettes and braille materials, and visual materials such as captioned video cassettes and discs.

(6) An assurance that the State will prepare reports to the Secretary in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this program, and will keep such records, and allow access to those records as the Secretary may require to ensure the correctness and verification of information provided by the State in its application.

(c) Applicants for development grants shall provide any other related information and assurances that the Secretary may reasonably require.

(Authority: 29 U.S.C. 2212(e))

(Approved by the Office of Management and Budget under Control No. 1820-0027)

§ 345.21 What is the content of an application for an extension grant?

A State that seeks an extension grant shall include the following in an application:

(a) A description of the needs of individuals with disabilities, their families or representatives, including individuals from underserved groups and other appropriate individuals within the State, for assistive technology devices and services.

(b) A description of the specific activities carried out under the development grant and the relationship of these activities to the creation of a statewide program of technology-related assistance.

(c) Documentation of the progress made under the development grant toward development of a statewide system of technology-related assistance.

(d) A description of the actions the State has taken to determine the degree of satisfaction of individuals with disabilities and their families or representatives, public and private service providers, employers, and other appropriate individuals with the degree of their ongoing participation in the development and implementation of the statewide system, with the specific activities carried out under the development grant, and with the progress made under the grant toward a consumer-responsive statewide system. That description must include—

(1) A description of the involvement of individuals with disabilities and their families or representatives in the activities carried out under the development grant and of their continuing involvement in the extension grant; and

(2) A description of the involvement of State agencies, other public agencies, and private organizations, including service providers and employers, in the activities under the development grant and in the resultant statewide system, and their continuing roles under the extension grant.

(e) A summary of comments on the State's programs and progress under the development grant that the State has solicited from relevant parties, including persons with disabilities and their families or representatives, public and private service providers, employers, and other appropriate individuals and organizations and a summary of the State's response to those comments.

(f) Information and assurances as described in § 345.20.

(g) An assurance that the State will comply with the guidelines established under Section 508 of the Rehabilitation Act of 1973 in making electronic equipment accessible to individuals with disabilities.

(Authority: 29 U.S.C. 2213(c))

(Approved by the Office of Management and Budget under Control No. 1820-0027)

Subpart D—How Does the Secretary Make a Grant?

§ 345.30 How does the Secretary evaluate an application for a development grant under this program?

(a) The Secretary evaluates each application using the selection criteria in § 345.31.

(b) The Secretary awards each application a value of zero to five (0–5) for each of seven (7) criteria listed in § 345.31. These values are based on how well the application addresses each criterion, as follows: Outstanding (5); Superior (4); Satisfactory (3); Marginal (2); poor (1); or not addressed in the application (0).

(c) The Secretary weights each criterion as indicated in § 345.31. The value awarded to each criterion in a State's application is multiplied by the standard weight accorded to that criterion in § 345.31.

(d) The final score for each application is determined by totaling the scores computed for each criterion.

(e) The maximum score for each application is 100 points.

(Authority: 29 U.S.C. 2212)

§ 345.31 What selection criteria are used for development grants under this program?

(a) The Secretary rates each application to determine the degree to which—

(1) *Needs assessment* (Weight: 2; Total Points: 10) The application demonstrates a comprehensive assessment of the need for a statewide, consumer-responsive program of technology-related assistance that includes—

(i) A preliminary assessment of the needs of individuals with disabilities for assistive technology devices and services, including the needs of individuals from underserved groups and in various geographic areas of the State, that includes a description of how these estimates were obtained;

(ii) An assessment of existing efforts in the State to provide technology-related assistance to individuals with disabilities, including a description of the type, extent, and level of technology-related assistance activities, the public and private agencies and individuals involved in these activities and the nature of their involvement, and an assessment of the effectiveness of these activities; and

(iii) An assessment of the current unmet needs in the State that would have to be met in order to accomplish each of the seven purposes of the program as described in § 345.2;

(2) *Goals and objectives* (Weight: 3; Total Points: 15) The application identifies goals and objectives that—

(i) Address each of the unmet needs in the State described in § 345.31(a)(1); and

(ii) Are clearly measurable, with both milestones of progress and indicators of success;

(3) *Plan of activities* (Weight: 3; Total Points: 15) The application presents a plan of activities that—

(i) Indicates a likelihood that the proposed activities will accomplish the goals and objectives as set forth in § 345.31(a)(2) and will result in the development and implementation of a comprehensive, consumer-responsive, statewide system of technology-related assistance;

(ii) Is consistent with the authorized purposes, functions, and activities of the program; and

(iii) Provides, to the extent feasible, for equitable distribution of amounts received under the grant in all geographic areas of the State, and effectively considers the needs of underserved groups;

(4) *Evaluation plan* (Weight: 3; Total Points: 15) The application presents an effective plan for evaluating the progress made toward accomplishment of the goals and objectives of the State's project that—

(i) Specifies adequate indicators of accomplishment for each of the goals and objectives;

(ii) Specifies appropriate measures to be used and the data elements needed for these measures that will result in an adequate evaluation;

(iii) Specifies appropriate sources of data and feasible and appropriate data collection methods to be used for each measure;

(iv) Describes acceptable methods of data analysis that are likely to yield objective and meaningful evaluation results; and

(v) Allocates sufficient resources, including personnel, funds, and administrative priority, to the evaluation to ensure that the evaluation will meet the requirements of this part;

(5) *Management plan* (Weight: 2; Total Points: 10) The application presents a plan for management of the activities under the grant that—

(i) Includes an adequate number of staff with appropriate training and experience to implement the activities under the project grant;

(ii) Presents an appropriate plan to manage and account for the fiscal resources of the project, consistent with the requirements of the program, including §§ 345.4, 345.20, 345.44, and 345.45;

(iii) Presents a detailed internal management plan for the management of the resources under the grant, including specification of responsibilities and administrative authority and provisions for internal monitoring of progress;

(iv) Presents a realistic timeline for the implementation of project activities so as to ensure accomplishment of proposed goals and objectives within the time period proposed in the application; and

(v) Allots sufficient and appropriate resources from the grant or other sources for the accomplishment of the proposed project activities;

(6) *Inclusion of individuals with disabilities and their families or representatives* (Weight: 4; Total Points: 20) The application describes substantive roles for individuals with disabilities and their families or representatives in—

(i) The development of the application, including the assessment of needs;

(ii) The establishment of goals and objectives for the project;

(iii) The planning and implementation of the functions and activities to be carried out under the project grant; and

(iv) The evaluation of activities under the grant and the assessment of the progress that the State has made toward the accomplishment of the project's goals and objectives; and

(7) *Coordination* (Weight: 3; Total Points: 15) The application describes adequate coordination among appropriate State, public, and private agencies and organizations in—

(i) The development of the application, including the assessment of needs and description of current related activities in the State;

(ii) The identification of goals and objectives for the project to be conducted under the grant;

(iii) Participation in the proposed functions and activities to be conducted under the grant;

(iv) The development and implementation of interagency activities, including interagency agreements, if appropriate, that will result in the broad scale participation and exchange of information necessary to implement a statewide program of technology-related assistance; and

(v) The evaluation of the project and of the progress made toward the development of a consumer-responsive, statewide system.

(Authority: 29 U.S.C. 2212(e), 2214(a) and 2217(c))

(Approved by the Office of Management and Budget under Control No. 1820-0027)

§ 345.32 What other factors does the Secretary take into consideration in making development grant awards under this program?

In making development grants under this program, the Secretary takes into consideration, to the extent feasible—

(a) Achieving a balance among States that have differing levels of development of statewide programs of technology-related assistance; and

(b) Achieving a geographically equitable distribution of the grants.

(Authority: 29 U.S.C. 2212(d) (1) and (2))

§ 345.33 What is the review process for an application for an extension grant?

The Secretary may award an extension grant to a State that demonstrates to the Secretary that it has made significant progress in developing and implementing a consumer-responsive, statewide program of technology-related assistance under a development grant. The Secretary bases the decision to make an award on—

(a) The State's application for an extension grant as described in § 345.21; and

(b) The report of the site visit team, which is composed of peers from other participating States and other qualified individuals, and which visits the State's project during the final year of the development grant, concerning the extent to which the State has made significant progress in developing a consumer-responsive statewide program of technology-related assistance.

(Authority: 29 U.S.C. 2213(c) and 2215(a))

Subpart E—What Conditions Must Be Met After an Award?

§ 345.40 What are the reporting requirements for the recipient of a development grant?

States receiving development grants shall submit the following reports, and shall make these reports readily available to the public at no extra cost:

(a) An annual progress report that, at a minimum, describes—

(1) Activities completed under the grant;

(2) Progress made toward achieving the goals and objectives of the development of a consumer-responsive, statewide program of technology related assistance;

(3) The impact of the program activities on individuals with disabilities, public agencies, financial resources committed to technology-related assistance for individuals with disabilities, community-based organizations, and employers, and, to the extent appropriate, examples of the impact on individuals with disabilities;

(4) The problems, if any, that were encountered in carrying out the proposed activities under the grant;

(5) Activities planned for the following year to rectify problems encountered in implementing grant activities; and

(6) Revisions, if any, to the measurable goals and objectives specified in the original grant application, based on experiences under the grant and revisions, if any, to the plan for measuring achievement of those goals and objectives.

(b) Any other reports that the Secretary may reasonably require to carry out the Secretary's functions under this program.

(Authority: 29 U.S.C. 2212(e) and 2214(a))

(Approved by the Office of Management and Budget under Control No. 1820-0027)

§ 345.41 What are the reporting requirements for the recipient of an extension grant?

In addition to meeting the reporting requirements specified in § 345.40, recipients of extension grants shall include in their annual reports a description of the types of assistance provided under the grant, the settings in which the assistance was provided, the effects of that assistance, especially with respect to individuals with disabilities, and the methods by which the information required for the annual report was obtained.

(Authority: 29 U.S.C. 2214(b))

(Approved by the Office of Management and Budget under Control No. 1820-0027)

§ 345.42 Who retains title to devices provided under this program?

Title to devices purchased with grant funds under this part, either directly or through any contract or subgrant, must be held by a public agency or by an individual with disabilities who is the beneficiary of the device. If the disabled individual does not have legal status to hold title, the title may be retained by a parent or legal guardian.

(Authority: 29 U.S.C. 2212(e)(12))

§ 345.43 What are the requirements for grantee participation in the Secretary's progress assessments?

Recipients of development grants shall participate in the Secretary's assessment of the extent to which States are making significant progress by—

(a) Participating in the on-site monitoring visits that will be made to each grantee during the final year of the development grant; and

(b) Providing written evaluations of the State's progress toward fulfilling its goals and the objectives of the project, and such other documents as the Secretary may reasonably require to complete the required assessment.

(Authority: 29 U.S.C. 2215(a))

(Approved by the Office of Management and Budget under Control No. 1820-0027)

§ 345.44 What are the restrictions on the use of funds under this program?

(a) States receiving funds under this part shall—

(1) Place control of and administrative responsibility for the funds under a public agency;

(2) Avoid commingling funds under the grant with funds from any other source;

(3) Use funds under the grant to supplement rather than replace amounts available from other sources for technology-related assistance; and

(4) Not use funds under this part to pay financial obligations for technology-related assistance that would otherwise have been paid from amounts available from other sources, unless payment is only to prevent a delay in the receipt of technology-related assistance by an individual with disabilities and the amount used to pay the financial obligation is reimbursed in full by the responsible agency or entity.

(b) A State receiving a grant may make contracts or subgrants with public or private nonprofit and for-profit agencies to carry out activities under the grant, provided that—

(1) A designated public agency maintains fiscal responsibility and accountability; and

(2) All appropriate provisions related to data collection, recordkeeping, and cooperation with the Secretary's evaluation and program monitoring efforts are applied to all subcontractors and subgrantees as well as to the agency receiving the grant.

(Authority: 29 U.S.C. 2201(b)(1)(E), 2211(b) (7) and (8), and (c) (2)(G), (3), and (5), and 2212(e) (8), (11), (12)(A), and (14))

§ 345.45 What is the relation between this program and related assistance under other programs?

No State or Federal agency may, by reason of this program, reduce medical or other assistance available to or alter eligibility under—

(a) Titles II, V, XVI, XVIII, XIX, or XX of the Social Security Act;

(b) The Education of the Handicapped Act;

(c) The Rehabilitation Act of 1973; or

(d) Laws relating to veterans benefits.

(Authority: 29 U.S.C. 2215(c))

§ 345.46 What are the requirements for participation in the Secretary's evaluation of this program?

States receiving grants under this program shall—

(a) Cooperate with the Secretary in the development of an information system that can be used to compile qualitative and quantitative descriptions of the impact of the program on—

(1) The lives of individuals with disabilities, particularly with respect to—

(i) Greater control over their own lives;

(ii) Greater participation in home, school, work, and community activities;

(iii) More extensive interactions with individuals who do not have disabilities; and

(iv) Enhanced benefits from opportunities generally available to individuals who do not have disabilities;

(2) Public agencies, community-based organizations, and employers; and

(3) Fiscal resources committed to technology-related assistance for individuals with disabilities; and

(b) Provide to the Secretary such other information as may be necessary to complete the required national evaluation.

(Authority: 29 U.S.C. 2217 (b) and (c))

(Approved by the Office of Management and Budget under Control No. 1820-0027)

Subpart F—What Compliance Procedures May the Secretary Use?

§ 345.50 Who is subject to a corrective action plan?

Any State that fails to comply with the requirements of this part is subject to a corrective action plan.

(Authority: 29 U.S.C. 2215(b)(1))

§ 345.51 What penalties may the Secretary impose on a grantee that is found not to be in compliance?

A State that fails to comply with the requirements of this part may be subject to penalties such as—

(a) Partial or complete termination of funds;

(b) Ineligibility to participate in the grant program in the following year; or

(c) Reduction in funding for the following year.

(Authority: 29 U.S.C. 2215(b)(2))

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix—Analysis of Comments and Changes

Composition of the Peer Review Panel

Comment: Several commenters remarked on the reference in the preamble to the composition of a peer review panel, urging the Department to assure that individuals with disabilities, or their family members, be included on each peer review panel.

Discussion: The reference to peer review in the preamble was meant to notify the public that the Department intends to conduct peer review of the applications, as required by the Education Department General Administrative Regulations (EDGAR), since there was no reference to peer review in the statute. The NPRM referred to the inclusion of individuals who had experience with "personal use of assistive technology." It is the general policy of NIDRR and the Office of Special Education and Rehabilitative Services (OSERS) to include consumers who have disabilities or members of their families in the peer review of applications.

In accordance with this policy, the Secretary intends to seek the involvement of individuals with disabilities, or a family member of an individual with disabilities, in the peer review panels, and has noted this intention in the preamble to the regulations. The Secretary agrees that the involvement of persons with disabilities in the review of the applications for this program is important.

Changes: None.

Definitions

Comment: Several commenters suggested that the regulations should include the statutory definitions of several important terms, so as to emphasize those definitions and call them to the attention of the public.

Discussion: It is not the practice of the Department to repeat statutory definitions in the regulations because to do so would be redundant. The regulations are meant to be used in conjunction with the statute and other regulations, and not to stand independently of them.

Changes: None.

Comment: One group of commenters requested that the Department clarify in the regulations such issues as "what is a consumer-responsive, comprehensive statewide system" and "how does a State develop such a system."

Discussion: The Department believes that the legislation was framed to give States considerable flexibility in

designing and implementing systems that would be appropriate for the individual States. The Secretary believes that the Department should not limit this flexibility by imposing restrictive regulatory requirements about what such a system should be, or how a State should go about developing such a system. The Secretary believes that the regulations emphasize the elements of a proposed approach that would be important, including the involvement of individuals with disabilities and the involvement of a range of public and private agencies.

Changes: None.

Selection Criteria

Comment: Many commenters remarked on the weights given to various criteria in the evaluation of applications for grants. While there were many different suggestions for how the criteria should be weighted, there was a general consensus that the weights accorded to "Needs assessment" and "Goals and objectives" were excessive because the statute authorizes the conduct of a needs assessment as one of the activities to be supported under the grant. At the same time, many commenters argued that criteria emphasizing the inclusion of individuals with disabilities and coordination among agencies were undervalued. A number of commenters also stated that more weight should be given to the quality of the evaluation plan. One commenter urged that the provision of devices and training in the use of devices were critical elements of the program, and that these elements should be reflected in the selection criteria.

Discussion: The Secretary believes that there are a number of reasonable approaches to evaluating applications under this program and that there is considerable merit to increasing the emphasis on the role of persons with disabilities, the evaluation plan, and coordination in the selection of applications, and to decreasing the weight attached to the needs assessment and goals. The statute authorizes grantees to conduct needs assessments with grant funds, and it is probable that the preliminary needs assessments included in the original grant applications will be cursory and based on estimates. Therefore, the Secretary agrees that it is not reasonable to assign a large weight to these assessments in the evaluation of the applications. Similarly, a State's goals and objectives would be expected to change based on the results of the needs assessment; therefore, it is not prudent to assign great importance to what may be only interim goals and objectives.

However, the Secretary would like to emphasize that the intent and structure of the program is to give each State an opportunity to improve on its current system of technology-related assistance. In the evaluation of whether individual States have made significant progress and thus should receive extension grants, the Secretary will assess the extent to which each State has met the State's needs. It is important, therefore, that the applicants provide as much detailed information as possible about goals, objectives, and the needs that are to be met, so that the Secretary will have baseline information from which to judge the extent of a grantee's progress for the purpose of making future awards.

The Secretary believes that the grantee's evaluation plans are critical elements in maintaining program accountability and in enabling both the grantee and the Government to assess the progress made under the grant.

The statute does not require each State to provide devices or training, but permits the States to select from a range of options those that would be most appropriate for a given State in developing a program to accomplish the purposes of the Act. Thus, the Secretary believes that there is no statutory basis for using the selection criteria to require the States to provide devices or training.

Changes: The points assigned to "Needs assessment" and "Goals and objectives" have been decreased to 10 and 15 respectively. The points assigned to "Inclusion of individuals with disabilities" have been increased to 20; the points assigned to "Evaluation plan" have been increased to 15; and the points assigned to "Coordination" have been increased to 15.

Use of Funds

Comment: One commenter stated that the funds under the Act must be used for the purchase and distribution of devices, while another contended that a limit should be set on the percentage of funds that could be used for those purposes so as not to deplete grant funds with benefits to only a small number of individuals.

Discussion: The Secretary understands both concerns. On the one hand, many individuals with disabilities and others are concerned that there are insufficient funds for the acquisition of technology devices and would like to assure that this program results in tangible benefits by providing devices. Conversely, others are concerned that emphasis on acquisition and distribution of devices could result in benefits to relatively few individuals, without any significant changes in the overall system of providing technology-related devices and services to persons with disabilities.

Both the purchase of devices and the development of a technology system are authorized by the statute. The Secretary believes that there is no basis for imposing either of the limitations suggested.

Changes: None.

Services to All Ages

Comment: A few commenters asked that the regulations clarify that the States must create systems that provide technology-related services for children and adults of all ages, with all types of disabilities of all levels of severity.

Discussion: Section two of the Act clearly states that the purpose of the Act is to provide financial assistance to States to help each State to develop and implement a consumer-responsive statewide program of technology-related assistance for individuals of all ages with disabilities. The statute does not address the issue of severity of disability, and thus the Secretary has no basis for imposing a regulatory requirement on the States that they must provide devices and services for individuals with all levels of severity of disability. However, the statute does imply that States are expected to identify the teohnology-related needs of all individuals in the States, to project the costs of meeting the needs of all individuals in the States who could benefit from technological devices or technology-related services, and to provide a plan for meeting the identified needs.

Changes: None.

Administration

Comment: One commenter questioned why § 345.4 refers to the need for a Governor to designate an agency to administer that program and a public agency to administer the funds. The commenter questioned whether these could or should be the same agency.

Discussion: The statute permits the Governor of a State to designate a private agency or entity, as well as a public agency, to develop and submit the application and conduct the program, but requires that the agency designated to receive and manage the funds be a public agency. If the Governor designates a public agency to make the application, then the Governor may designate the same agency for both purposes.

Changes: None.

Comment: One commenter requested that the provisions of § 345.20 be amended to permit voluntary agencies

to hold title to devices purchased with program funds.

Discussion: The statute provides that title to these devices must be held by the individual with a disability or by a public agency.

Changes: None.

Comment: One commenter requested that the term "not disabled" be substituted for "nondisabled" in § 345.11.

Discussion: The Secretary agrees that this change is an improvement.

Changes: Section 345.11 has been revised accordingly.

Comment: One commenter objected to the statement in the preamble that the States must address each of the seven purposes of the State grants program stated in Section 2(b)(1) of the statute.

This commenter argued that some of the purposes might not be relevant to the needs in a given State.

Discussion: The statute requires that the State programs address all of the purposes described in section 2(b)(1) of the Act. Each of those purposes is stated in terms of increasing awareness, availability, or likelihood of receiving devices and services. The purpose of the program is to assist States to improve along all of these dimensions. However, there is no requirement that a State implement separate activities to address each purpose, or that it devote specific resources to each purpose. It is conceivable that the analysis of needs will demonstrate conclusively that no resources should be expended for a given purpose. In that situation, of course, the application would not include a plan for such unnecessary spending. The purpose will have been addressed and unnecessary spending will not take place.

Changes: None.

Description of Prior Activities

Comment: One commenter questioned why the regulations state, in § 345.11, that a State may provide a description of relevant activities during fiscal year 1987 as an activity under the grant.

This commenter believed that the regulations should authorize descriptions of selected activities over a number of different years, rather than a comprehensive description of one fiscal year.

Discussion: In describing the statewide needs assessment that is authorized under the program, Section 101(c)(2) of the Act specifically refers to "* * * a description of efforts during the fiscal year ending before the date of the enactment of this Act * * *"

Changes: None.

Repair and Maintenance

Comment: One commenter stated that the regulations should place more emphasis on repair and maintenance of assistive devices, as referred to in the Act in the definition of "assistive technology service." The commenter specifically requested that repair and maintenance be emphasized in § 345.10 of the regulations.

Discussion: The definitions in the Act are incorporated into the regulations by reference. The regulations are designed to implement the statute, and the only reference to repair and maintenance is in the definitions section of the statute. Because the Act authorizes all of the activities included in the definition of "assistive technology service", the Department expects that States will include repair and maintenance in their activities.

However, the statutory definition also includes many other activities that are equally as important as repair and maintenance. The Secretary does not believe it is practical to mention each of these activities in the regulations. At the same time, there is no justification for providing additional emphasis to repair and maintenance.

Further, § 345.10 of the regulations specifically implements Section 101(b) of the Act, which does not make reference to repair and maintenance. Therefore, it would not be appropriate to refer to repair and maintenance in that section of the regulations.

Repair and maintenance of assistive devices are critical to a technology service system. However, the statute permits each State to determine the extent to which its programs under the grant should emphasize these activities.

Changes: None.

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federal register

Wednesday
August 9, 1989

Part IV

The President

Proclamation 6006—National Neighborhood Crime Watch Day, 1989

Digest

of

Proceedings

Presidential Documents

Proclamation 6006 of August 7, 1989

National Neighborhood Crime Watch Day, 1989

By the President of the United States of America

A Proclamation

Communities across the United States bear testimony to the great things Americans can accomplish through their own resourcefulness and the help of neighbors. In business, government, education, and social services, the ingenuity and hard work of individual Americans have been both the foundation and the catalyst for progress.

Individual private citizens represent a particularly important force in our Nation's fight against crime. Last year, crime struck one in four American households. While law enforcement officials do all they can to apprehend and prosecute those who prey upon innocent victims, the cooperation of law-abiding citizens is vital to their efforts.

Today, more than 19 million Americans participate in neighborhood crime watch programs. They remain vigilant against criminal activity in their neighborhoods and report suspicious behavior to the police. They also keep special watch over elderly persons and others who might easily become victims of theft or violence. These Americans who look out for their neighbors and make a personal commitment to help fight crime serve as positive role models for young people, thereby demonstrating not only respect for the law, but also active concern for the well-being of others. Participants in crime watch programs affirm that, as communities, we must not and will not tolerate contempt for civil order and disregard for the rights of innocent people.

On August 8, 1989, millions of Americans will join their neighbors in "National Night Out," an evening sponsored each year by the National Association of Town Watch. This event provides citizens an opportunity to demonstrate the importance and effectiveness of community participation in crime prevention efforts. During the "National Night Out," families spend the period between 8:00 p.m. and 10:00 p.m. on the porches, steps, or lawns of their homes as a notice to criminals that their communities are off limits to drug trafficking and other illicit activities. "National Night Out" is a way for all Americans to express their determination to protect and enjoy the security of their homes and neighborhoods.

To encourage all Americans to join with their neighbors in such crime prevention programs, the Congress, by Senate Joint Resolution 136, has authorized and requested the President to issue a proclamation designating August 8, 1989, as "National Neighborhood Crime Watch Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim August 8, 1989, as National Neighborhood Crime Watch Day. I call upon the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of August, 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 fourteenth.

George Bush

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 310/Pub. L. 101-68

To remove a restriction from a parcel of land in Roanoke Virginia, in order for that land to be conveyed to the state of Virginia for use as a veterans nursing home. (Aug. 1, 1989; 103 Stat. 175; 1 page) Price: $1.00

S.J. Res. 150/Pub. L. 101-69

To designate August 1, 1989, as "Helsinki Human Rights Day". (Aug. 2, 1989; 103 Stat. 176; 4 pages) Price: $1.00

H.R. 999/Pub. L. 101-70

To reauthorize the Advisory Council on Historic Preservation. (Aug. 3, 1989; 103 Stat. 180; 1 page) Price: $1.00

H.R. 968/Pub. L. 101-71

Noise Reduction Reimbursement Act of 1989. (Aug. 4, 1989; 103 Stat. 181; 1 page) Price: $1.00

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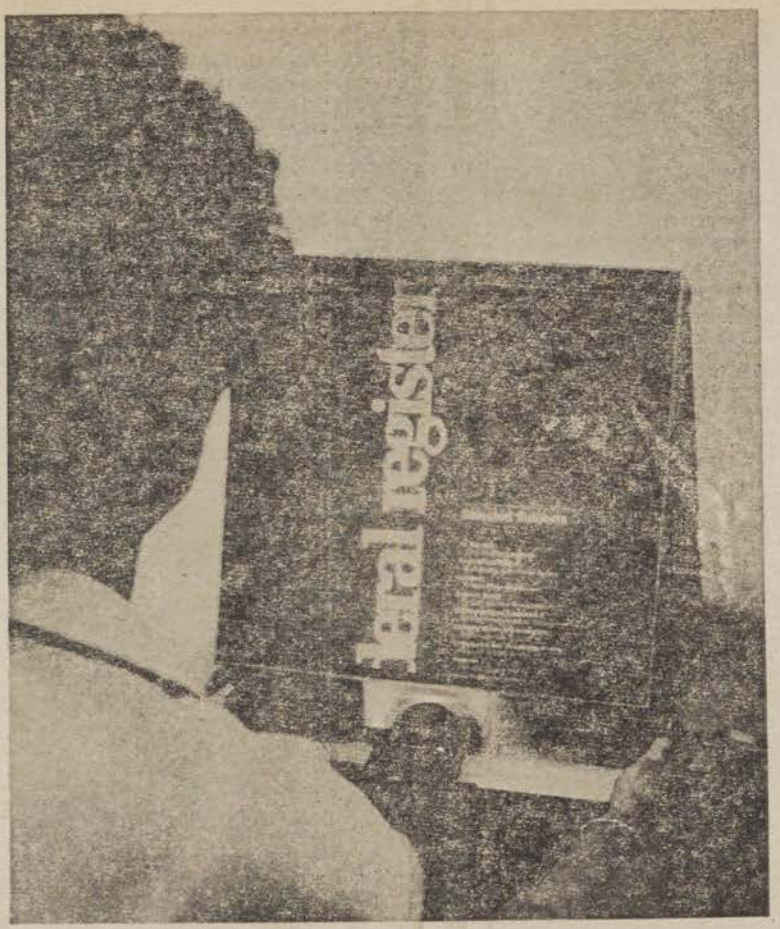
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