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# federal register

Wednesday
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**Briefing on How To Use the Federal Register**
For information on briefing in Boston, MA, see announcement on the inside cover of this issue.

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

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### BOSTON, MA

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# Rules and Regulations

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

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 202

[Reg. B; EC-1]

### Equal Credit Opportunity; Update to Official Staff Commentary

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final official staff interpretation.

**SUMMARY:** The Board is publishing in final form revisions to the official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and is a substitute for individual staff interpretations of the regulation. The revisions include interpretations of the final rule amending Regulation B to implement Equal Credit Opportunity Act amendments on business credit as well as interpretations about data collection.

**EFFECTIVE DATE:** April 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** In the Division of Consumer and Community Affairs, Adrienne D. Hurt, Senior Attorney, or Jane Ahrens, Staff Attorney, at (202) 452-2412; for the hearing impaired *only*, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

(1) General

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691-1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act. This statute is implemented by the Board's Regulation B (12 CFR part 202).

The Board has published an official staff commentary (12 CFR part 202 (Supp. I)) to interpret the regulation. The commentary provides guidance to creditors in applying the regulation to specific transactions, and is updated periodically to address significant questions that arise. This notice contains the fourth update.

(2) Revisions

Most of the revisions to the commentary interpret provisions of Regulations B implementing amendments to the ECOA contained in the Women's Business Ownership Act of 1988, Public Law No. 100-533, 102 Stat. 2689. (The regulatory amendments, effective April 1, 1990, were published on December 7, 1989 at 54 FR 50482.) The other revisions to the commentary address questions that have arisen about data collection, including one related to amendments to the Home Mortgage Disclosure Act and Regulation C.

*Section 202.1—Authority, Scope, and Purpose*

1(a) Authority and Scope

The definition of "Board," previously contained in § 202.2(g), is now in the commentary to § 202.1.

*Section 202.2—Definitions*

2(g) Business Credit

In the December 1989 amendments to the regulation, the definition of business credit was moved from § 202.3(d)(1) to § 202.2(g). Accordingly, comment 3(d)-1 has been redesignated comment 2(g)-1.

*Section 202.3—Limited Exceptions for Certain Classes of Transactions*

3(d) Government Credit

In the December 1989 amendments to the regulation, § 202.3(e) was redesignated § 202.3(d). Accordingly, comment 3(e)-1 on governmental credit has been redesignated comment 3(d)-1.

*Section 202.5—Rules Concerning Taking of Applications*

5(b) General Rules Concerning Requests for Information

Paragraph 5(b)(2)

Comment 5(b)(2)-1 is added to clarify that the term "state law," as used in § 202.5(b)(2), includes the requirements of any political subdivision thereof. For example, a creditor may request, pursuant to a local ordinance, information required for monitoring purposes that is otherwise prohibited by § 202.5 (c) and (d). Comment 5(b)(2)-2 is added to clarify that a lender subject to the Home Mortgage Disclosure Act (HMDA), but exempt (because of its asset size) from reporting data about applicant characteristics, may voluntarily collect and report the information in accordance with the requirements of HMDA and Regulation C without violating the ECOA.

*Section 202.9—Notifications*

9(a) Notification of Action Taken, ECOA Notice, and Statement of Specific Reasons

Paragraph 9(a)(3)

Section 202.9(a)(3), added by the December 1989 amendments to the regulation, contains the rules for providing notifications on business credit applications. Comments 9(a)(3)-1 through -5 give creditors guidance in complying with this paragraph.

*Section 202.10—Furnishing of Credit Information*

Comment 10-1 is revised to clarify that the section applies only to consumer credit. (The rule in this section was adopted to ensure that married women are not left without credit histories if they become divorced or widowed. In the past, credit histories on joint accounts held by spouses were typically reported only in the husband's name.) The section does not apply to sole proprietors or any other business credit applicants.

*Section 202.13—Information for Monitoring Purposes*

13(a) Information To Be Requested

A cross reference to the commentary to § 202.5(b)(2) is added as comment 13(a)-7.

**List of Subjects in 12 CFR Part 202**

Banks, Banking, Civil rights, Consumer protection, Credit, Federal Reserve System, Marital status discrimination, Minority groups, Penalties, Religious discrimination, Sex discrimination, Women.

**(3) Text of Revisions**

Pursuant to authority granted in section 703 of the Equal Credit Opportunity Act (15 U.S.C 1691b), the Board amends the official staff commentary to Regulation B (12 CFR part 202, Supp. I) as follows:

**PART 202—[AMENDED]**

1. The authority citation for part 202 continues to read as follows:

**Authority:** 15 U.S.C. 1691–1691f.

2. In § 202.1, comment 1(a)–3 is added to read as follows:

**§ 202.1 Authority, scope, and purpose.**

* * * * *

1(a) Authority and scope.

* * * * *

3. *Board.* The term "Board," as used in this regulation, means the Board of Governors of the Federal Reserve System.

* * * * *

3. In § 202.2, comment 2(g)–1 and a heading are added to read as follows:

**§ 202.2 Definitions.**

* * * * *

2(g) *Business credit.*

1. *Definition.* The test for deciding whether a transaction qualifies as business credit is one of primary purpose. For example, an open-end credit account used for both personal and business purposes is not business credit unless the primary purpose of the account is business-related. A creditor may rely on an applicant's statement of the purpose for the credit requested.

* * * * *

4. In § 202.3, comment 3(e)–1 and the heading and comment 3(d)(3)–1 are removed; comment 3(d)–1 and the heading are revised to read as follows:

**§ 202.3 Limited exceptions for certain classes of transactions**

* * * * *

3(d) *Government credit.*

1. *Credit to governments.* The exception relates to credit extended to (not by) governmental entities. For example, credit extended to a local government by a creditor in the private sector is covered by this exception, but credit extended to consumers by a federal or state housing agency does not qualify for special treatment under this category.

* * * * *

5. In § 202.5, comments 5(b)(2)–1 and 5(b)(2)–2 and a heading are added to read as follows:

**§ 202.5 Rules concerning taking of applications.**

* * * * *

5(b) *General rules concerning requests for information.*

* * * * *

Paragraph 5(b)(2)

1. *Local laws.* Information that a creditor is allowed to collect pursuant to a "state" statute or regulation includes information required by a local statute, regulation, or ordinance.

2. *Information required by Regulation C.* Regulation C generally requires creditors covered by the Home Mortgage Disclosure Act (HMDA) to collect and report information about the race or national origin and sex of applicants for home improvement loans and home purchase loans, including some types of loans not covered by § 202.13. Certain creditors with assets under $30 million, though covered by HMDA, are not required to collect and report these data; but they may do so at their option under HMDA, without violating the ECOA or Regulation B.

* * * * *

6. In § 202.9, comments 9(a)(3)–1 through 9(a)(3)–5 and a heading are added to read as follows:

**§ 202.9 Notifications.**

* * * * *

9(a) *Notification of action taken, ECOA notice, and statement of specific reasons.*

* * * * *

Paragraph 9(a)(3)

1. *Coverage.* In determining the rules in this paragraph that apply to a given business credit application, a creditor may rely on the applicant's assertion about the revenue size of the business. (Applications to start a business are governed by the rules in § 202.9(a)(3)(i).) If an applicant applies for credit as a sole proprietor, the revenues of the sole proprietorship will determine which rules in the paragraph govern the application. However, if an applicant applies for business purpose credit as an individual, the rules in paragraph 9(a)(3)(i) apply unless the application is for trade or similar credit.

2. *Trade credit.* The term "trade credit" generally is limited to a financing arrangement that involves a buyer and a seller—such as a supplier who finances the sale of equipment, supplies, or inventory; it does not apply to an extension of credit by a bank or other financial institution for the financing of such items.

3. *Factoring.* Factoring refers to a purchase of accounts receivable, and thus is not subject to the act or regulation. If there is a credit extension incident to the factoring arrangement, the notification rules in § 202.9(a)(3)(ii) apply as do other relevant sections of the act and regulation.

4. *Manner of compliance.* In complying with the notice provisions of the act and regulation, creditors offering business credit may follow the rules governing consumer credit. Similarly, creditors may elect to treat all business credit the same (irrespective of revenue size) by providing notice and keeping records in accordance with § 202.9(a)(3)(i).

5. *Timing of notification.* A creditor subject to § 202.9(a)(3)(ii)(A) is required to notify a business credit applicant, orally or in writing, of action taken on an application within a reasonable time of receiving a completed application. Notice provided in accordance with the timing requirements of § 202.9(a)(1) is deemed reasonable in all instances.

* * * * *

7. In § 202.10, comment 10–1 is revised to read as follows:

**§ 202.10 Furnishing of credit information.**

1. *Scope.* The requirements of § 202.10 for designating and reporting credit information apply only to consumer credit transactions. Moreover, they apply only to creditors that opt to furnish credit information to credit bureaus or to other creditors; there is no requirement that a creditor furnish credit information on its accounts.

* * * * *

8. In § 202.13, comment 13(a)–7 is added to read as follows:

**§ 202.13 Information for monitoring purposes.**

13(a) *Information to be requested.*

* * * * *

7. *Data collection under Regulation C.* See comment 5(b)(2)–2.

* * * * *

Board of Governors of the Federal Reserve System, March 29, 1990.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 90–7706 Filed 4–3–90; 8:45 am]

**BILLING CODE 6210–01–M**

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**FARM CREDIT ADMINISTRATION**

**12 CFR Parts 614, 620, and 621**

**RIN 3052–AA96**

## Loan Policies and Operations; Disclosure to Shareholders; Accounting and Reporting Requirements; Correction

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule; correction.

**SUMMARY:** The Farm Credit Administration (FCA) is correcting an error in the final rule relating to the Federal Agricultural Mortgage Corporation. This rule appeared in the **Federal Register** on January 12, 1989 (54 FR 1153).

**EFFECTIVE DATE:** February 23, 1989.

**FOR FURTHER INFORMATION CONTACT:** Cindy R. Nicholson, Paralegal Specialist, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

**SUPPLEMENTARY INFORMATION:** In preparing the final rule for publication in

the Federal Register, the amendatory instruction for the authority citation was incorrectly stated.

## PART 614—LOAN POLICIES AND OPERATIONS

1. Amendatory instruction #1 on page 54 FR 1155 is revised to correctly read as follows:

1. The authority citation for part 614 is revised to read as follows:

Dated: March 29, 1990.

Charles R. Row,

*Acting Secretary, Farm Credit Administration Board.*

[FR Doc. 90-7687 Filed 4-3-90; 8:45 am]

BILLING CODE 6705-01-M

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## 12 CFR Part 615

**RIN 3052-AA97**

## Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Correction

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule; correction.

**SUMMARY:** The Farm Credit Administration (FCA) is correcting an error in the final rule which amended the regulation governing the funding of Farm Credit System institutions by means of issuance of securities. This rule appeared in the Federal Register on January 12, 1989 (54 FR 1156).

**EFFECTIVE DATE:** February 23, 1989.

**FOR FURTHER INFORMATION CONTACT:** Cindy R. Nicholson, Paralegal Specialist, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** In preparing the final rule for publication in the Federal Register, the authority citation on page 54 FR 1158 was incorrectly stated.

## PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 is revised to correctly read as follows:

**Authority:** Secs. 1.5, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26; 12 U.S.C. 2013, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6; sec. 301(a) of Public Law 100-233.

Dated: March 29, 1990.

Charles R. Row,

*Acting Secretary, Farm Credit Administration Board.*

[FR Doc. 90-7686 Filed 4-3-90; 8:45 am]

BILLING CODE 6705-01-M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 90-NM-40-AD; Amdt. 39-6567]**

## Airworthiness Directives; Aerospatiale Model ATR42-300 and ATR42-320 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42-300 and ATR42-320 series airplanes, which requires repetitive inspections of the passenger/crew door lifting device compensation rod and fail-safe cable, and repair, if necessary, and modification of the rod installation and its fail-safe cable. This amendment is prompted by a recent report of simultaneous rupture of the door lifting device compensation rod and its fail-safe cable. This condition, if not corrected, could result in the loss of the passenger/crew door, and subsequently prevent passengers from exiting via the emergency evacuation slide.

**EFFECTIVE DATE:** April 20, 1990.

**ADDRESSES:** The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert J. Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Aerospatiale Model ATR42 series airplanes. There has been a recent report of a simultaneous rupture of the passenger/crew door lifting device compensation rod and its fail-safe cable. The fraying of the cable wires has been attributed to a defect in the original design of the locking device wire and fail-safe cable. This condition, if not corrected, could result in the loss of the passenger/crew door, and subsequently prevent passengers from exiting via the emergency evacuation slide.

Aerospatiale has issued Service Bulletin ATR42-52-0042, Revision 1, dated January 31, 1990, which describes procedures for repetitive inspections of the passenger/crew door balance rod and the fail-safe cable, and repair, if necessary. The service bulletin also describes a modification of the rod installation and its fail-safe cable, which consists of reconfiguring the rod installation in order to have the drain holes' axis perpendicular to the counterbalance arm/rod plane, and installing a heat shrink tubing at the upper end of the cable. The DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 89-138-024(B)R1 addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive inspections of the passenger/crew door balance rod and the fail-safe cable, and repair, if necessary; and modification of the rod installation and the fail-safe cable, in accordance with the service bulletin previously described.

This is considered to be interim action. The manufacturer is currently developing a modification that will preclude the need for repetitive inspections. Once this is developed, approved, and available, the FAA may consider further rulemaking to revise this AD to require additional necessary action.

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

The regulations adopted herein will not have substantial direct effects on the

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

**List of Subjects in 14 CFR Part 39**

Air Transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Aerospatiale:** Applies to Model ATR42–300 and ATR42–320 series airplanes, on which Modification 1236 has been installed (or which have been retrofitted in accordance with Aerospatiale Service Bulletin ATR42–52–0019), and Modification 2440 has not been installed. Compliance is required as indicated, unless previously accomplished.

To prevent simultaneously rupture of the passenger/crew door lifting device compensation rod and its fail-safe cable, accomplish the following:

A. Within 15 days after the effective date of this AD, and thereafter at intervals not to exceed 250 hours time-in-service, inspect the upper part of the rod to ensure that the area is free from dents, scratches, or other damage, and inspect the fail-safe cable for damage, in accordance with part A of Aerospatiale Service Bulletin ATR42–52–0042, Revision 1, dated January 31, 1990.

1. If damage to the rod is 0.2 mm deep or more, prior to further flight, replace the rod with a serviceable part in accordance with the service bulletin.

2. If damage to the rod is less than 0.2 mm deep, perform local blend out and apply protection (alodine, primer, and finish paint), in accordance with the service bulletin.

3. If a wire of the fail-safe cable is damaged, prior to further flight, replace the cable with a serviceable cable.

B. Within 15 days after the effective date of this AD, modify the rod installation and install heat shrink tubing at the upper end of the fail-safe cable, in accordance with part B of Aerospatiale Service Bulletin ATR42–52–0042, Revision 1, dated January 31, 1990.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Aerospatiale 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 20, 1990.

Issued in Seattle, Washington, on March 26, 1990.

**Steven B. Wallace,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90–7700 Filed 4–3–90; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 89–NM–251–AD; Amdt. 39–6566]**

## Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to all Aerospatiale Model ATR42 series airplanes, which currently requires inspections to detect cracks in each main landing gear (MLG) wheel, and replacement, if necessary. This condition, if not corrected, could lead to complete failure of the wheel. This action eliminates the requirement to periodically inspect certain wheels with specific serial numbers. This amendment is prompted by an analysis of service data which compared wheels built by the manufacturer, which did not exhibit cracking, with wheels reworked in the field, which continued to develop cracks.

**EFFECTIVE DATE:** May 11, 1990.

**ADDRESSES:** The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Huhn, Standardization Branch, ANM–113; telephone (206) 431–1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 88–09–04, Amendment 39–5907 (53 FR 15362; April 29, 1988), applicable to all Aerospatiale Model ATR42 series airplanes, which eliminates the requirement to periodically inspect certain wheels with specific serial numbers, was published in the **Federal Register** on January 4, 1990 (55 FR 300).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 53 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD

on U.S. operators is estimated to be $16,960.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–5907 (53 FR 15362; April 29, 1988), AD 88–09–04, with a new airworthiness directive as follows:

Aerospatiale: Applies to all Model ATR42 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the main landing gear wheel, due to cracked spokes, accomplish the following:

A. For wheels with Loral Part Number (P/N) 5006856, 5006856–1, and 5006856–2, having serial numbers OCT83–001 through OCT86–377, with the exception of serial numbers OCT86–001 through OCT86–071: Within 7 days or 100 landings after the last inspection in accordance with AD 88–09–04, whichever occurs later, perform a visual inspection of the inboard wheel halves, with the airplane jacked, to detect cracks, in accordance with Loral Systems Group Service Bulletin ATR42–32–40–1, Revision 2, dated June 23, 1987. Repeat the inspection at intervals not to exceed 7 days or 100 landings, whichever occurs later. If a crack is detected, only one additional landing may be made after the detection of that crack before the cracked inboard wheel half must be replaced.

B. For wheels with Loral Part Number (P/N) 5006856, 5006856–1, and 5006856–2, having serial numbers OCT83–001 through OCT86–377, with the exception of serial numbers OCT86–001 through OCT86–071: At each tire change, perform an eddy current inspection or other nondestructive test of the inboard wheel halves to detect cracks, in accordance with Loral Systems Group Service Bulletin ATR42–32–40–1, Revision 2, dated June 23, 1987. Replace any cracked inboard wheel half before further flight.

**Note:** MLG wheels with Loral Part Number 5006856–2, serial numbers OCT86–001 through OCT86–071 and NOV86–072 through AUG87–376, are factory built new wheels, and are not subject to the repetitive inspection requirements of paragraphs A. and B., above.

C. Replacement of inboard wheel halves with a new reinforced half wheel and replacement of the existing hub spacer with a modified hub spacer, in accordance with Aerospatiale Service Bulletin ATR42–32–0017, dated January 19, 1988, or Revision 1, dated May 20, 1988 (reference Loral Service Bulletin ATR42–32–40–4, dated July 15, 1987), constitutes terminating action for the repetitive inspection required by paragraphs A. and B., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

**NOTE:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes Amendment 39–5907, AD 88–09–04.

This amendment becomes effective May 11, 1990.

Issued in Seattle, Washington, on March 26, 1990.

**Steven B. Wallace,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90–7701 Filed 4–3–90; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 39

**[Docket No. 89–CE–26–AD; Amdt. 39–6563]**

## Airworthiness Directives; Beech 55, 56TC, 58, and 95 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), applicable to certain Beech 55, 56TC, 58, and 95 series airplanes, which requires inspections of the wing forward spar carry-through structure. There have been numerous reports of cracking of this structure. This action is necessary to detect and repair cracks that could propagate to lengths that would compromise the integrity of the wing attachment to the fuselage and lead to possible loss of the airplane.

**EFFECTIVE DATE:** May 7, 1990.

*Compliance:* As prescribed in the body of the AD.

**ADDRESSES:** Beech Service Bulletin No. 2269, Revision 1, dated March 1990, applicable to this AD may be obtained from the Beech Aircraft Corporation, Commercial Service Department 52, P.O. Box 85, Wichita, Kansas 67201–0085, or may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Engler, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Wichita, Kansas 67209, Telephone (316) 946–4409.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring inspections of the wing forward spar carry-through structure for cracks on certain Beech 55, 56TC, 58, and 95 series airplanes was published in the **Federal Register** on October 17, 1989 (54 FR 42512). The proposal was prompted by numerous reports of cracks of various sizes in the forward wing spar carry-through web structure on these airplanes. The cracking is caused by fatigue in the corners of the fuselage frames, around and between the huckbolts, and in areas where stringers are attached. The carry-through web

cracks have been found on both the left and right sides of the front spar carry-through and may be accelerated by rough field operations. Although the reported cracks have not progressed to a point where actual safety of flight has been affected, failure to detect and repair these cracks could result in propagation to lengths that would compromise the integrity of the wing attachment to the fuselage. As a result, Beech issued Service Bulletin (SB) No. 2269, dated August 1989, that specifies the inspection and repairs necessary to maintain integrity of the wing forward spar carry-through structure.

Since the condition described is likely to exist or develop in other airplanes of the same type design, an AD was proposed which would require inspections of the wing forward spar carry-through structure for cracks on certain Beech 55, 56TC, 58, and 95 series airplanes. This action did not include Models 58TC and 58P airplanes which have different carry-through web assemblies because there have been no reports of cracks in these models. Interested persons have been afforded an opportunity to comment on the proposal. Two commenters responded. Both stated that these inspections should be performed in conjunction with annual or 100 hour inspections. The FAA disagrees. Current FAA policy does not permit the use of annual inspections for compliance times unless a direct relationship exists between calendar time and the nature of the problem being addressed. The FAA believes that compliance within the next 100 hours time-in-service will permit scheduling of the initial accomplishment of this AD at the time of the next annual inspection. No comments were received on the cost determination. Subsequent to the publication of SB 2269 and the proposed regulation in the **Federal Register**, Beech conducted an extensive re-evaluation of the damage tolerance characteristics of the carry-through web structure. The results of this investigation led to a redefinition of the length of cracks that could be allowed before corrective action is necessary. In addition, the repetitive inspection intervals for detecting crack progression in the bend radius and the time required to repair the web structure were extended. These revised inspection criteria are included as Revision 1 to SB 2269, dated March 1990. The FAA has determined that Revision 1 to SB 2269 provides relief for the operators without compromising the integrity of the forward spar carry-through structure. Accordingly, the proposal is adopted with the incorporation of the applicable criteria of Beech SB 2269, Revision 1, dated March 1990.

The FAA has determined that this regulation only involves 4,000 airplanes at an approximate cost of $160 for each airplane. The total cost is estimated to be $640,000. The cost of this modification will not have a significant economic impact on any small entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule"under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

## PART 39—[AMENDED]

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

**Beech:** Applies to the following airplanes certificated in any category:

| Models | Serial No. |
|---|---|
| 95, B95, B95A, D95A, E95. | TD-1 through TD-721. |
| 95-55, 95-A55, 95-B55 and 95-B55A. | TC-1 through TC-2456, except TC-350. |
| 95-C55, 95-C55A, D55, D55A, E55 and E55A. | TC-350 and TE-1 through TE-1201 |
| 95-B55B (T42A) | TF-1 through TF-70. |
| 56TC, A56TC | TG-1 through TG-94. |
| 58, 58A | TH-1 through TH-1475. |

*Compliance:* Required as indicated in the body of the AD, unless already accomplished.

To prevent cracks in the wing forward spar carry-through web structure from propagating to lengths that could compromise the integrity of the wing attachment to the fuselage, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS), after the effective date of this AD, or upon the accumulation of 1500 hours total TIS, whichever occurs later, and thereafter at the intervals specified below, inspect the wing forward spar carry-through web structure in accordance with the instructions in Beech Service Bulletin (SB) No. 2269, Revision 1, dated March 1990.

(1) If no cracks are found, repeat the inspection at 500 hour TIS intervals thereafter.

(2) For cracks in the bend radius:

(i) If the crack length is less than 2.25 inches, prior to further flight stop drill the crack in accordance with the instructions in Beech SB No. 2269, Revision 1, and reinspect for crack progression every 200 hours TIS thereafter. Only one stop drilled crack for the left side and one stop drilled crack for the right side of the web structure are permissible.

(ii) If the crack length is greater than 2.25 inches but less than 4.0 inches, prior to further flight stop drill the crack in accordance with the instructions in Beech SB No. 2269, Revision 1, and within the next 100 hours TIS, repair the web structure with the applicable Beech Part Number (P/N) 58-4008 kit as specified in the above SB. After installation of the applicable Beech P/N 58-4008 kit, dye-penetrant inspect this area for cracks within the next 1,500 hours TIS from the time of installation of the applicable kit, and reinspect for cracks at 500 hours TIS intervals thereafter. If cracks are detected in these subsequent inspections, prior to further flight, contact the Wichita Aircraft Certification Office at the address below for disposition.

(iii) If the crack length is greater than 4.0 inches, prior to further flight repair the web structure with the applicable Beech P/N 54-4008 kit as specified in the above SB. After installation of the applicable Beech P/N 58-4008 kit, dye-penetrant inspect this area for cracks within the next 1,500 hours TIS from the time of installation of the applicable kit, and reinspect for cracks at 500 hours TIS intervals thereafter. If cracks are detected in these subsequent inspections, prior to further flight, contact the Wichita Aircraft Certification Office at the address below for disposition.

(3) For cracks in the web face, in the area of the huckbolt fasteners:

(i) If the crack length is less than 1.0 inch, reinspect for crack progression every 100 hours TIS thereafter. Only one crack for the left side and one crack for the right side are

permissible, provided neither crack exceeds 1.0 inch in length.

**Note 1:** Do not stop drill these cracks due to the possibility of damaging the structure behind the web face.

(ii) If any crack length is greater than 1.0 inch, or a crack is connecting two fastener holes, within the next 25 hours TIS, repair the web face with the applicable Beech P/N 58–4008 kit as specified in the above SB. After installation of the applicable Beech P/N 58–4008 kit, dye-penetrant inspect this area for cracks within the next 1,500 hours TIS from the time of installation of the applicable kit, and reinspect for cracks at 500 hours TIS intervals thereafter. If cracks are detected in these subsequent inspections, prior to further flight, contract the Wichita Aircraft Certification Office at the address below for disposition.

(iii) If any crack passes through two fastener holes and extends beyond the holes for more than 0.5 inch, prior to further flight repair the web face with the applicable Beech P/N 58–4008 kit as specified in the above SB. After installation of the applicable Beech P/N 58–4008 kit, dye-penetrant inspect this area for cracks within the next 1,500 hours TIS from the time of installation of the applicable kit, and reinspect for cracks at 500 hours TIS intervals thereafter. If cracks are detected in these subsequent inspections, prior to further flight, contact the Wichita Aircraft Certification Office at the address below for disposition.

(4) If cracks are found on the same side of the airplane in both the forward and aft web face, or the bend radii, and any of the cracks are more than 1.0 inch long, prior to further flight repair the web structure with the applicable Beech P/N 58–4008 kit as specified in the above SB. After installation of the applicable Beech P/N 58–4008 kit, dye-penetrant inspect this area for cracks within the next 1,500 hours TIS from the time of installation of the applicable kit, and reinspect for cracks at 500 hours TIS intervals thereafter. If cracks are detected in these subsequent inspections, prior to further flight, contact the Wichita Aircraft Certification Office at the address below for disposition.

**Note 2:** If a fuselage skin crack is discovered around the opening for the lower forward carry-through fitting, an external doubler may be required.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(c) An alternate method of compliance or adjustment of the initial or repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, Wichita Aircraft Certification Office, FAA, room 100, 1801 Airport Road, Wichita, Kansas 67209.

**Note 3:** The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Office of the Assistant Chief Counsel, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on May 7, 1990.

Issued in Kansas City, Missouri, on March 21, 1990.

**Don C. Jacobsen,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90–7702 Filed 4–3–90; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 39

**[Docket No. 83–ANE–05; Amdt. 39–6473]**

## Airworthiness Directives; Rolls-Royce plc (R–R) Dart Mks. 506, 510, 511, 514, 515, 520, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 542, 543, and 550 Series Turboprop Engines and All Variants

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) applicable to R–R Dart series turboprop engines. It supersedes AD 77–20–04 R1, Amendment 39–4639 (48 FR 19161), that requires a one time inspection and overhaul of propeller low torque switches. The new AD establishes a life limit for those switches, and is needed to prevent cracking of the snap diaphragm in the switch, which could delay propeller auto-feathering and thereby adversely affect aircraft controllability.

**EFFECTIVE DATE:** May 3, 1990.

*Compliance:* As indicated in the body of the AD.

**ADDRESSES:** The applicable service bulletin (SB) may be obtained from Rolls-Royce plc, Attn: Dart Engine Service Manager, East Kilbride, Glasgow G74–4PY, Scotland, or may be examined at the Regional Rules Docket, room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

**FOR FURTHER INFORMATION CONTACT:** Karen M. Grant, Engine Certification Branch, ANE–142, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7087.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to include an AD that establishes a life limit on propeller low torque switches was published in the **Federal Register** on November 26, 1986, (51 FR 42854).

The proposal was prompted by the FAA's determination that propeller low torque switch snap diaphragms have continued to crack in service despite the inspection and overhaul requirements of AD 77–20–04 R1. This condition could delay propeller auto-feathering and thereby adversely affect aircraft controllability.

Interested persons have been afforded an opportunity to participate in the making of this amendment and no comments were received. Accordingly, the proposal is adopted without change.

The regulations adopted herein do not have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves 784 engines, and will cost approximately $190 per engine. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal; and (4) will not have significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

### PART 39—[AMENDED]

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive (AD) which supersedes AD 77-20-04 R1, Amendment 39-4639 (48 FR 19161), as follows:

**Rolls-Royce plc:** Applies to Rolls-Royce plc (R-R) Dart Mks. 506, 510, 511, 514, 515, 520, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 542, 543, and 550 series turboprop engines and all variants.

Compliance is required as indicated, unless already accomplished.

To prevent cracking of the auto-feather switch snap diaphram remove from service the following low torque switch part numbers: 3700892, 3700895, 3701232, 3500355, 3500356, 3500410, 3500411, 3500412, L944707, L944708, L944709, L944738, L944739, L944740, L944742, L944743, L944744, and L944769. Remove from service these part numbers, in accordance with the Appendix to this AD, as follows:

(a) Remove from service, low torque switches that have accumulated five or more calendar years time in service on the effective date of this AD, by December 31, 1990.

(b) Remove from service, low torque switches that have accumulated less than five calendar years time in service on the effective date of this AD, within five calendar years total time in service; or by December 31, 1990, whichever occurs later.

(c) Remove from service, low torque switches which cannot have their in-service calendar time established, by December 31, 1990.

(d) Thereafter, remove from service, new or overhauled low torque switches at or prior to accumulating five calendar years time since initial installation on an engine. This limit includes storage or on-shelf time accumulated after initial installation on an engine.

**Note:** Overhaul of the low torque switch zero times the part.

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

(f) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments of the compliance (schedule) time specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment supersedes AD 77-20-04 R1, Amendment 39-4639 (48 FR 19161).

This amendment becomes effective on May 4, 1990.

Issued in Burlington, Massachusetts, on March 26, 1990.

Jack A. Sain,

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

## Appendix

*Low Torque Switch (Negretti and Zambra)—in Service Functional Test and Revised Overhaul*

*1. Effectivity*

DART—
506 510 511 514 515 520 525 526 527 528 529 530 531 532 533 534 535 536 542 543 550 and all variants of these marks.

*2. Reason*

Cracking of the snap diaphragm (see Fig. 2) in the propeller low torque switch, if sufficiently extensive, can delay the accomplishment of auto-feathering by reducing the torque pressure at which the switch operates. The presence of such cracking, whose effect is not revealed by any current field maintenance or pre-flight check activity, could create difficulties in the rare event of an auto-feather demand occurring above decision speed (V1) during take-off.

A number of cracked snap diaphragms have been found, one of which was sufficiently extensive to affect the torque pressure at which the switch operated.

*3. Compliance*

MANDATORY—The requirements specified below have been declared Mandatory by the Civil Aviation Authority (C.A.A.):

A. Service Engines

(1) Accomplish the bench function test described in 4.B. (the compliance date for this was given in Service Bulletin Da61-12 issued May 76 as Dec.31/76).

(2) Remove from service and submit for overhaul, in accordance with 4.C., all switches which have attained or exceeded a calendar life of 5 years since first entry into service or since the snap diaphragm was last removed (see notes overleaf). Remove these switches from service by Dec.31/79.

(3) Repetitively overhaul switches to the revised procedure, described in 4.C., at every engine overhaul or at intervals not exceeding 5 years in service (see notes below).

**Note 1:** 5 years calendar life commences with the initial fitment of the switch on an engine as new or after snap diaphragm renewal, and includes subsequent storage or on-shelf time.

**Note 2:** In circumstances where it cannot be positively established when the snap diaphragm was last renewed, remove affected switches from service by the date prescribed in 3.A.(2).

B. Overhaul Agencies

Overhaul switches to the revised procedure described in 4.C. (the compliance date for this was given in Service Bulletin Da61-12 issued May 76 as Sept. 30/76).

*4. Action*

A. Service Engines

Remove all low torque switches and accomplish a function test as described in 4.B.

**Note:** For removal and fitment of the switch to the engine, refer to the appropriate Maintenance Manual.

Switches complying with the pressure test limits can be refitted. Switches which do not comply with the pressure test limits must be rejected for overhaul, quoting this service bulletin number on the rejection label.

B. Function Test Instructions

(1) Utilize a performance test rig of the basic type as illustrated in Fig. 1.

(2) Mount the switch on the test rig with a 100 p.s.i. calibrated pressure guage connected to an air pressure line.

(3) Slowly apply air pressure until the contacts open and note the pressure guage reading.

**Note:** Although the "snap" action of the diaphragm is normally audible, it is preferable to use a lamp circuit wired to the switch terminals as illustrated in Fig. 1.

(4) Further increase the pressure to 60 p.s.i.

(5) Slowly decrease the pressure until the contacts close and note the pressure guage reading.

(6) The contacts must close above 40 p.s.i., and the pressure required to open the contacts must not exceed 55 p.s.i. A differential of at least 5 p.s.i. must be obtained.

(7) Record the switch serial number and this service bulletin number in the engine log book. Also record the switch operating pressures.

C. Overhaul Agencies

All low torque switches must be overhauled (and the snap diaphragm renewed) in accordance with the revised procedures now stipulated in the Overhaul Manuals, as follows:

| | | Volume | Chapter | Section |
|---|---|---|---|---|
| Mk.505 to 513 | Rolls-Royce | 1 | 2-20 | Disassembly. |
| | Overhaul Manual | 1 | 4-22 | Inspection. |
| | T.S.D. 264 | 2 | 6-20 | Assembly. |
| Mk. 520 to 536 and 550 | Rolls-Royce Overhaul Manual O-Da-7-AC | 1 | 61-20-3 | — |

| | | Volume | Chapter | Section |
|---|---|---|---|---|
| Mk. 542, 543 | Negretti and Zambra Overhaul Manual Publication Ref. 61-20-4 | — | — | — |

*5. Approval*

The contents of this bulletin were originally approved by a representative of the Civil Aviation Authority (C.A.A.) on May 7/76 and reapproved on May 12/78 and Aug. 30/78.

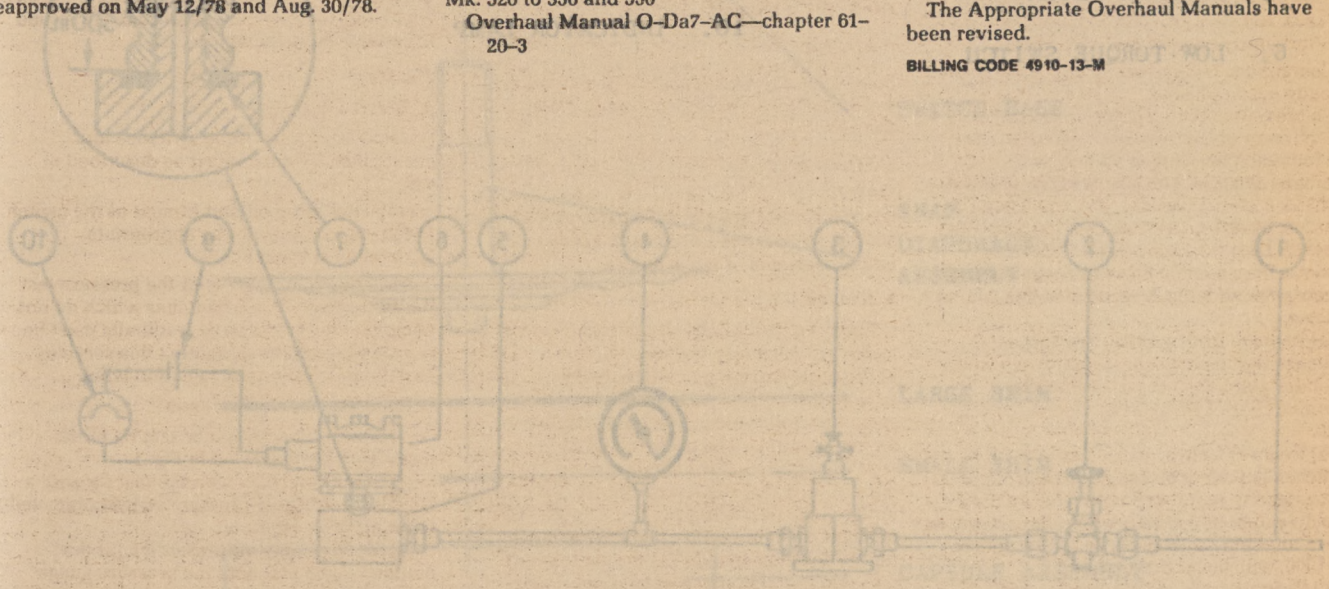
*6. References*

Mk. 506 to 515
Overhaul Manual T.S.D. 264—Low torque switch
Mk. 520 to 536 and 550
Overhaul Manual O-Da7-AC—chapter 61-20-3
Mk. 542, 543
Negretti and Zambra Overhaul Manual—Publication Ref: 61-20-4

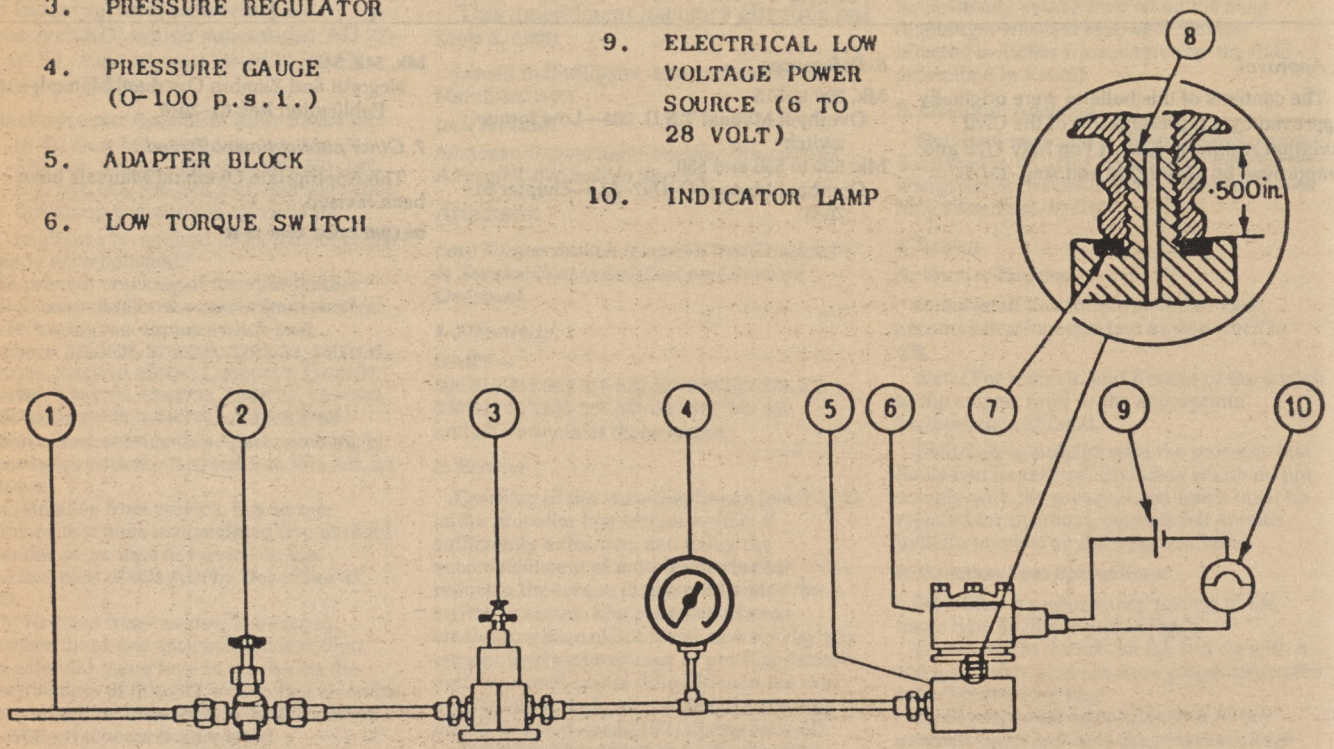
*7. Other publications affected*

The Appropriate Overhaul Manuals have been revised.

BILLING CODE 4910-13-M

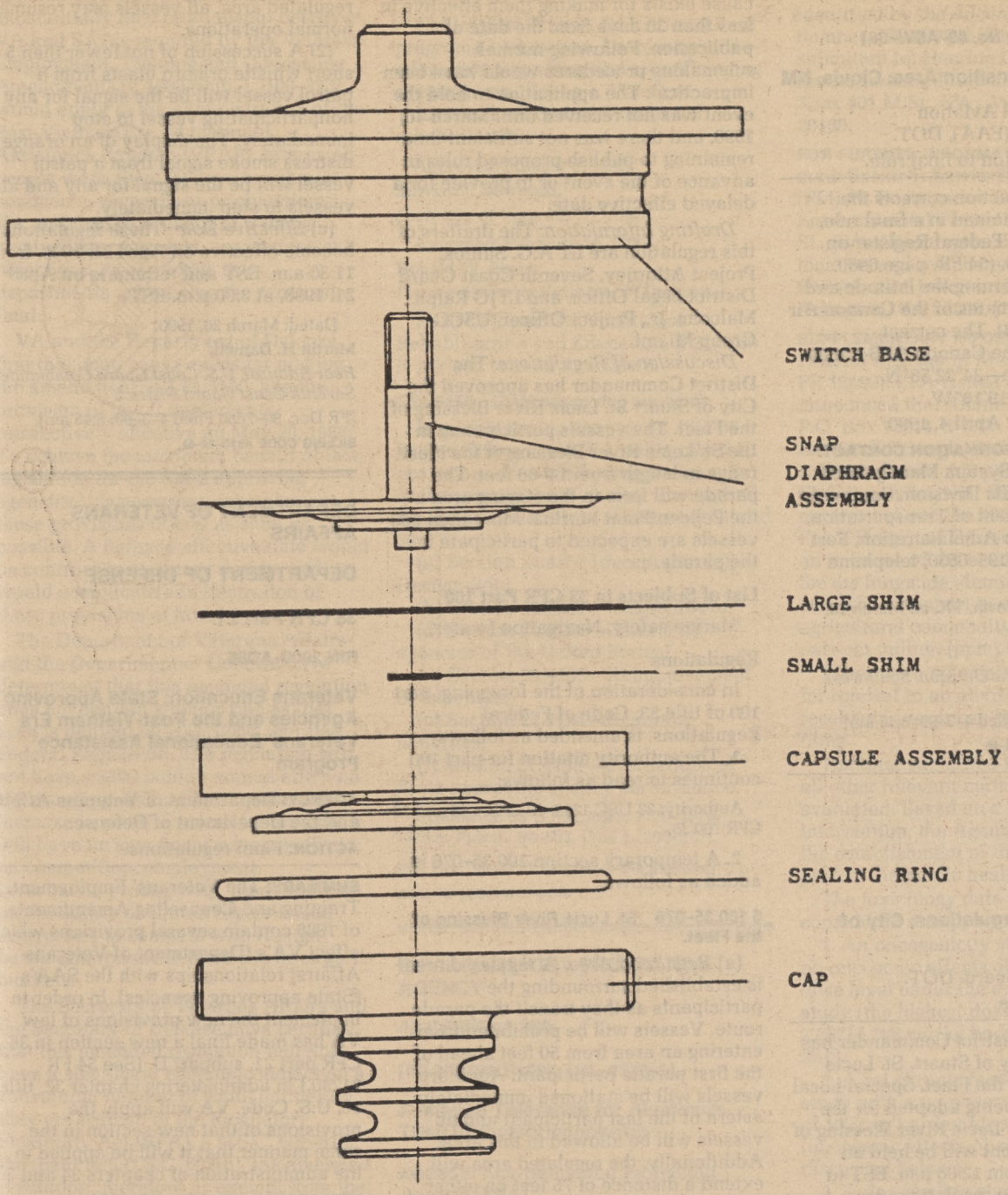


1. AIR SUPPLY (100 p.s.i.)
2. NEEDLE VALVE
3. PRESSURE REGULATOR
4. PRESSURE GAUGE (0-100 p.s.i.)
5. ADAPTER BLOCK
6. LOW TORQUE SWITCH
7. ALKATHENE WASHER
8. THREADED SPIGOT 5/16 in. B.S.F.
9. ELECTRICAL LOW VOLTAGE POWER SOURCE (6 TO 28 VOLT)
10. INDICATOR LAMP




Performance test rig

Fig.1




Exploded view of diaphragm and base assembly
Fig.2

[FR Doc. 90–7698 Filed 4–3–90; 8:45 am]
BILLING CODE 4910–13–C

**14 CFR Part 71**

**[Airspace Docket No. 89-ASW-38]**

**Revision of Transition Area: Clovis, NM**

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

**ACTION:** Correction to final rule.

**SUMMARY:** This action corrects the coordinates contained in a final rule, published in the **Federal Register** on October 30, 1989, (54 FR, page 6980, column (1) concerning the latitude and longitude coordinates of the Cannon Air Force Base (AFB). The correct coordinates of the Cannon AFB are as follows: Latitude—34°22'58"N. Longitude—103°19'18"W.

**EFFECTIVE DATE:** April 4, 1990.

**FOR FURTHER INFORMATION CONTACT:** Bruce C. Beard, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas 76193-0530, telephone (817) 624-5530.

Issued in Fort Worth, TX, on March 16, 1990.

Larry L. Craig,

*Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 90-7703 Filed 4-3-90; 8:45 am]

BILLING CODE 4910-13-M

**Coast Guard**

**33 CFR Part 100**

**[CGD7 90-16]**

**Special Local Regulations: City of Stuart**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The District Commander has approved the City of Stuart, St. Lucie River Blessing of the Fleet. Special Local Regulations are being adopted for the City of Stuart, St. Lucie River Blessing of the Fleet. The event will be held on April 21, 1990, from 12:00 p.m. EST to 3:00 p.m. EST. The regulations are needed to promote the safety of life on navigable waters during the event.

**EFFECTIVE DATE:** These regulations will become effective on April 21, 1990, at 11:30 p.m. EST and terminate on April 21, 1990, at 3:30 p.m. EST.

**FOR FURTHER INFORMATION CONTACT:** Contact LTJG. R. Malcolm, Jr. (305) 535-4304.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The application to hold the event was not received until March 10, 1990, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

*Drafting Information:* The drafters of this regulation are LT A.G. Santos, Project Attorney, Seventh Coast Guard District Legal Office, and LTJG Ralph Malcolm, Jr., Project Officer, USCG Group Miami.

*Discussion of Regulations:* The District Commander has approved the City of Stuart St. Lucie River Blessing of the Fleet. The vessels participating in the St. Lucie River Blessing of the Fleet, range in length from 14-60 feet. The parade will form in the staging area at the Pelican Point Marina. More than 200 vessels are expected to participate in the parade.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Regulations**

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

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. A temporary section 100.35-076 is added as follows:

**§ 100.35-076 St. Lucie River Blessing of the Fleet.**

(a) *Regulated Area:* A regulated area is established surrounding the participants as they transit the parade route. Vessels will be prohibited from entering an area from 50 feet ahead of the first parade participant. Auxiliary vessels will be stationed immediately astern of the last participant and no vessels will be allowed in this area. Additionally, the regulated area will extend a distance of 75 feet on either side of the centerline of the regulated area. The transit starts northwest of marker 21 and proceeds southeast to the Evans Crary Bridge. The parade will then proceed southwest, crossing in front of the bridge, then turning north past marker 23X, and then west after passing marker 23X for 1 mile where it will disband.

(b) *Special Local Regulations:* (1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander. After the passage of the parade participants and the regulated area, all vessels may resume normal operations.

(2) A succession of not fewer then 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective Date:* These regulations become effective on April 21, 1990, from 11:30 a.m. EST and terminate on April 21, 1990, at 3:30 p.m. EST.

Dated: March 26, 1990.

**Martin H. Daniell,**

*Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.*

[FR Doc. 90-7680 Filed 4-3-90; 8:45 am]

BILLING CODE 4910-14-M

**DEPARTMENT OF VETERANS AFFAIRS**

**DEPARTMENT OF DEFENSE**

**38 CFR Part 21**

**RIN 2900-AD88**

**Veterans Education; State Approving Agencies and the Post-Vietnam Era Veterans' Educational Assistance Program**

**AGENCY:** Department of Veterans Affairs and the Department of Defense.

**ACTION:** Final regulations.

**SUMMARY:** The Veterans' Employment, Training and Counseling Amendments of 1988 contain several provisions which affect VA's (Department of Veterans Affairs) relationships with the SAA's (State approving agencies). In order to implement the new provisions of law VA has made final a new section in 38 CFR part 21, subpart D. (See 54 FR 21230.) In administering chapter 32, title 38, U.S. Code, VA will apply the provisions of that new section in the same manner that it will be applied in the administration of chapters 34 and 36.

**EFFECTIVE DATE:** May 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2092.

**SUPPLEMENTARY INFORMATION:** On pages 35006 and 35007 of the **Federal Register** of August 23, 1989, VA and the Department of Defense proposed

amending part 21 to state that the substantially new relationship between VA and SAA's required by the Veterans' Employment, Training and Counseling Amendments of 1988 (Pub. L. 100–323) would apply to the administration of the Post-Vietnam Era Educational Assistance Program (VEAP). Interested people were given 30 days to submit comments, suggestions or objections. VA and the Department of Defense received no comments, suggestions or objections. Accordingly, the departments are making the proposal final.

VA and the Department of Defense find that good cause exists for making the amendment to § 21.5150, like the provision of law it implements, retroactively effective on May 20, 1988. To achieve the maximum benefit of this legislation for the State approving agencies it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; and would complicate administration of these provisions of law.

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

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

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

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

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

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

Approved: January 9, 1990.

**Edward J. Dewinski,**

*Secretary of Veterans Affairs.*

Approved: February 16, 1990.

**Donald W. Jones,**

*Deputy Assistant Secretary of Defense.*

In 38 CFR part 21, Vocational Rehabilitation and Education, § 21.5150 is revised to read as follows:

**§ 21.5150 State approving agencies.**

In administering chapter 32, title 38, United States Code, VA will apply the provisions of the following paragraphs in the same manner as they are applied for the administration of chapters 34 and 36:

(a) Section 21.4150 (except par. (e))—Designation;

(b) Section 21.4151—Cooperation;

(c) Section 21.4152—Control by agencies of the United States;

(d) Section 21.4153—Reimbursement of expenses;

(e) Section 21.4154—Report of activities;

(f) Section 21.4155—Evaluations of State approving agency performance.

(Authority: 38 U.S.C. 1641, 1770–1774, 1774A; Pub. L. 94–502, Pub. L. 100–323)

[FR Doc. 90–7721 Filed 4–3–90; 8:45 am]

BILLING CODE 8320–01–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[PP 9F3729/R1067; FRL–3733–6]**

### Pesticide Tolerance for Aluminum Tris(O-Ethylphosphonate)

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

**ACTION:** Final rule.

**SUMMARY:** This document increases the established tolerance for residues of the fungicide aluminum tris(O-ethylphosphonate) in or on citrus from 0.1 part per million (ppm) to 0.5 ppm. This regulation to increase the maximum permissible level of residues of the fungicide in or on the commodity was requested by Rhone-Poulenc Ag Co.

**DATES:** This regulation becomes effective on April 4, 1990.

**ADDRESSES:** Written objections, identified by the document control number, [PP 9F3729/R1067], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1900.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 23, 1989 (54 FR 12009), EPA issued a notice which announced that Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted pesticide petition 9F3729 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, propose an increase of the established tolerance for the fungicide aluminum tris(O-ethylphosphonate) in or on the raw agricultural commodity citrus from 0.1 part per million (ppm) to 0.5 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted in the petition and all other relevant material have been evaluated. Based on a review of this information, the Agency concludes that the establishment of this tolerance will protect the public health.

The toxicology data listed below were considered in support of this tolerance.

1. An oncogenicity study in mice with no oncogenic effects observed at any dose level under the conditions of the study (the highest dose tested was 2,857/4,286 mg/kg body weight (bwt)/day).

2. A rat chronic feeding/oncogenicity study with a no-observed-effect (NOEL) of 100 mg/kg/day for systemic effects (oncogenic effects observed are discussed below).

3. A dog-feeding study with a NOEL of 250 mg/kg bwt/day.

4. A reproduction study in rats with a NOEL of 300 mg/kg bwt/day.

5. Teratology studies in rabbits and rats with teratogenic NOELs of 500 mg/kg/day and 1,000 mg/kg/day, respectively.

6. Ames mutagenicity assays, *E. coli* phage induction tests, micronucleus tests in mice, DNA repair tests using *E. coli*, and *Saccaromyces cervisiae* yeast assay that were all negative for mutagenic effects.

As stated in a notice, published in the Federal Register of November 2, 1983 (48 FR 50532), oncogenic effects were noted in the rat chronic feeding/oncogenicity study. In this study, Charles River CD rats were dosed with aluminum tris(O-ethylphosphonate) at levels of 0, 2,000, 8,000, and 40,000/30,000 ppm (0, 100, 400, and 2,000/1,500 mg/kg bwt/day). The 40,000-ppm dose was reduced to 30,000 ppm after 2 weeks following observations of staining of the abdominal fur and red coloration of the urine at 40,000 ppm (2,000 mg/kg bwt/day).

The highest dose level of the chemical tested in the male Charles River CD-1 rats (2,000/1,500 mg/kg bwt/day) in this study appears to approximate a maximum-tolerated dose (MTD) based on the finding of urinary bladder hyperplasia at this dose. Similarly, an MTD level appeared to be satisfied in the female Charles River CD-1 rats at the high-dose level of 2,000 mg/kg bwt/day, during the first 2 weeks of the oncogenicity/chronic feeding study, before the dose level was reduced to 1,500 mg/kg bwt/day.

The study demonstrated a significantly elevated incidence of urinary bladder tumors (adenomas and carcinomas combined at the highest dose level tested (2,000/1,500 mg/kg) in male Charles River CD-1 rats. The tumors were mainly seen in surviving males at the time of terminal sacrifice. The original pathological diagnosis of these tumors was independently confirmed by another consulting pathologist, who also reported an elevated incidence of urinary bladder hyperplasia in high-dose male rats. No elevated increase of urinary bladder tumors was observed in female rats.

Based on the diagnosis of the pathologist at the test laboratory where the study was performed, aluminum tris (O-ethylphosphonate) appeared to produce a statistically significant elevated increase of adrenal pheochromocytomas (adenomas and carcinomas combined) at the mid (400 mg/kg) and high (2,000/1,500 mg/kg) dose levels in the male Charles River CD-1 rats. The elevated pheochromocytoma increase was primarily due to an increase in the adenomas. This diagnosis was not confirmed by two other pathologists who reevaluated the data. The consulting pathologists reread the adrenal gland slides and did not find statistically significant dose-related increases in the incidence of pheochromocytomas for the male rats. The Agency attributed the difference in the pathological diagnoses to the fact that a high degree of variability exists in the interpretation of adrenal medullary neoplasia compared to adrenal medullary hyperplasia in identifying pheochromocytomas. None of the three pathologist reported a statistically significant increase in the combined incidence of the three types of adrenal medullary lesions (i.e., adenomas, carcinomas, and hyperplasia).

Based on the available information, the Agency has concluded that aluminum tris(O-ethylphosphonate) did not produce a compound-related increase in adrenal pheochromocytomas in the high-dose male rats. No adrenal gland tumors were produced in female rats.

The Agency has concluded that the available data provide limited evidence of the oncogenicity of aluminum tris (O-ethylphosphonate) in male rats and has classified the pesticide as a Category C oncogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with proposed Agency guidelines, published in the Federal Register of November 23, 1984 (49 FR 46294). Based on a review of the Health Effects Division Peer Review Committee of the Office of Pesticide Programs, the Agency has determined that a quantative risk assessment is not suitable for the following reasons:

1. The oncogenic response observed with this chemical was confined solely to the high-dose males at one site (urinary bladder) in rats.

2. The tumor response was primarily due to an increase in benign tumors.

3. The tumors were seen only in surviving animals at the time of terminal sacrifice.

4. The oncogenic effects were observed only at unusually high doses which exceed the commonly used limit dose of 1 g/kg/day recommended as an upper-limiting dose for bioassays.

5. The chemical was not oncogenic when administered in the diet to Charles River CD-1 mice at dose levels ranging from 2,500 to 30,000 ppm (357 to 4,286 mg/kg bwt/day).

6. Aluminum tris (O-ethylphosphonate) was not mutagenic in eight well conducted genotoxicity assays.

Using a hundredfold safety factor and the NOEL of 250 mg/kg bwt/day determined by the 2-year dog feeding study, the allowable daily intake (ADI) is 3.0 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from the established and proposed tolerances of 0.001532 mg/kg bwt/day and utilizes less than 1.0 percent of the ADI. Previous tolerances have been established for aluminum tris (O-ethylphosphonate) in asparagus, citrus, pineapples, and pineapple forage and fodder.

The metabolism of aluminum tris (O-ethylphosphonate) is adequately understood. There is no reasonable expectation of residues occurring in milk and meat of liverstock or poultry.

The nature of the residue is adequatley understood, and an adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 242, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-4432.

The pesticide is considered useful for the purposes for which the tolerance is sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

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

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

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

**List of Subjects in 40 CFR Part 180**

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

Dated: March 23, 1990.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. In § 180.415(a) in the table therein, by revising the entry for citrus, to read as follows:

**§ 180.415 Aluminum tris(O-ethylphosphonate); tolerances for residues.**

(a) * * *

| Commodities | Parts per million |
|---|---|
| * * * * * | |
| Citrus | 0.5 |
| * * * * * | |

* * * * *

[FR Doc. 90-7641 Filed 4-3-90; 8:45 am]

BILLING CODE 6560-50-D

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 88-596; RM-6430]**

### Radio Broadcasting Services; Austin, IN

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 224A to Austin, Indiana, as that community's first local broadcast service, in response to a petition for rule making filed on behalf of Jacksy Radio Association. See 54 FR 4048, January 27, 1989. Although petitioner requested a hyphenated allotment to Austin-Crothersville, the proposal lacked sufficient evidence to support the hyphenation request, and, therefore, the larger community was selected. Coordinates for Channel 224A at Austin are 38-46-03 and 85-48-14. With this action, the proceeding is terminated.

**DATES:** Effective May 5, 1990; The window period for filing applications for Channel 224A at Austin will open on May 8, 1990, and close on June 7, 1990.

**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. 88-596, adopted March 5, 1990, and released March 21, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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

Radio broadcasting.

## PART 73—[AMENDED]

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments is amended under Indiana at Austin, by adding Channel 224A.

Federal Communications Commission.

**Karl A. Kensinger,**

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

[FR Doc. 90-6944 Filed 4-3-90; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 531

**[Docket No. LVM 89-01; Notice 2]**

### Passenger Automobile Average Fuel Economy Standards; Final Decision To Grant Exemptions

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This decision is issued in response to individual petitions filed by three low volume manufacturers, Officine Maserati S.p.A. (Maserati), Lamborghini of North America (Lamborghini), and LondonCoach Co., Inc. (LondonCoach). Each company requested that it be exempted from the generally applicable passenger automobile average fuel economy standards, and sought establishment of lower alternative standards for each model year (MY) from which it sought exemption. This notice grants exemptions and establishes alternative standards as follows:

Lamborghini petitioned to be exempted for MYs 1983 and 1984. This notice grants that exemption and establishes alternate standards for Lamborghini of 13.7 mpg for MYs 1983 and 1984.

LondonCoach petitioned to be exempted for MYs 1985 and 1987. This notice grants that exemption and establishes alternate standards for LondonCoach of 21.0 mpg for MYs 1985 through 1987.

Maserati petitioned to be exempted for MYs 1984 and 1985. This notice grants that exemption and establishes alternate standards for Maserati of 17.9 mpg for MY 1984 and 16.8 mpg for MY 1985.

**DATES:** Effective Date: April 4, 1990. These exemptions and alternative standards apply to the respective above mentioned manufacturers for the stated model years. Petitions for reconsideration must be received by May 4, 1990.

**ADDRESSES:** Petitions for reconsideration may be submitted to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC. 20590. It is requested, but not required, that 10 copies be provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Kee's telephone number is (202) 366-0846.

**SUPPLEMENTARY INFORMATION:** NHTSA is exempting three low volume manufacturers from the generally applicable average fuel economy standards for passenger automobiles and establishing alternative standards applicable to those companies for the petitioned model years as follows: Lamborghini for MYs 1983 and 1984; LondonCoach for MYs 1985 through 1987; and Maserati for MYs 1984 and 1985.

These exemptions are issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended ("the Act") (15 U.S.C. 2002(c)). Section 502(c) provides that a passenger automobile manufacturer which manufactures fewer than 10,000 vehicles annually may be exempted from the generally applicable average fuel economy standard for a particular model year if that standard is greater than the low volume manufacturer's maximum feasible average fuel economy and if NHTSA

establishes an alternative standard applicable to that manufacturer at its maximum feasible average fuel economy. In determining the manufacturer's maximum feasible average fuel economy, section 502(c) of the Act (15 U.S.C. 2002(e)) requires NHTSA to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

This final decision was preceded by proposed decisions announcing the agency's tentative conclusion that the subject manufacturers should be exempted from the generally applicable average fuel economy standards for the petitioned model year, and that alternative standards should be established for the manufacturers for each of the model years; 54 FR 40689 (October 3, 1989), for Lamborghini, LondonCoach, and Maserati.

The agency received one comment on the October 3, 1989 notice from Maserati. Maserati endorsed the establishment of alternative standards for Maserati for MYs 1984 and 1985, but noted a "typographical error" in the summary section of the notice of proposed rulemaking (NPRM) where it was stated that the proposed alternative standards for Maserati was 17.3 mpg for MY 1984 and 16.6 mpg for MY 1985 rather than 17.9 mpg for MY 1984 and 16.8 mpg for MY 1985 as shown in the proposed amendment language at the end of the NPRM. The agency agrees with Maserati that the values in the summary of the NPRM are outdated. The discrepancy is that the first set of values were those requested in Maserati's petition while the second set are values that reflect Maserati's final adjusted CAFE as confirmed by the Environmental Protection Agency. Since 17.9 mpg for MY 1984 and 16.8 mpg for MY 1985 are the actual final CAFE values for Maserati, it is these values that will be used as the alternative fuel economy standards for Maserati.

Therefore, the agency is adopting the tentative conclusions set forth in the proposed decisions as its final conclusions, for the reasons set forth in the proposed decisions. Based on the conclusions that the maximum feasible average fuel economy levels for each of the petitions during the applicable model years would be as shown below, that other Federal motor vehicle standards would not affect achievable fuel economy beyond the extent considered in this analysis, and that the national effort to conserve energy will not be affected by the granting of these requested exemptions, NHTSA hereby exempts the three petitioners from the generally applicable average fuel economy standards and establishes alternative standards for the three petitioners for the model years and at the levels shown below.

NHTSA has analyzed this decision, and determined that neither Executive Order 12291 nor the Department of Transportation's regulatory policies and procedures apply, because this decision is not a "rule," which term is defined in the Executive Order as "an agency statement of general applicability and future effect." This exemption is not generally applicable, since it applies only to the three petitioners named in this notice. If the Executive Order and the Department policies and procedures were applicable, the agency would have determined that this action is neither "major" nor "significant"." The principal impact of this exemption is that the petitioners will not be required to pay civil penalties if it achieves its maximum feasible average fuel economy, and purchasers of its vehicles will not have to bear the burden of those civil penalties in the form of higher prices. Since this decision sets an alternative standard at the level determined to be the petitioners' maximum feasible average fuel economy, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

The agency has also considered the environmental implications of this decision in accordance with the National Environmental Policy Act and determined that this decision will not significantly affect the human environment. Regardless of the fuel economy of a vehicle, it must pass the emissions standards which measure the amount of emissions per mile travelled. Thus, the quality of the air is not affected by this exemption and alternative standard. Further, since petitioners' automobiles cannot achieve better fuel economy than the alternate standards granted in this notice, granting these exemptions will not affect the amount of gasoline available.

Since the Regulatory Flexibility Act may apply to decisions exempting manufacturers from generally applicable fuel economy standards, I certify that this decision will not have a significant economic impact on a substantial number of small entities. The decision as to each manufacturer affects only that manufacturer. This decision does not impose any burdens on any of the three petitioners. It does relieve these companies from being subject to infeasible standards for the applicable model years and from having to pay civil penalties for noncompliance with those standards. Small entities and small governmental jurisdictions generally are not purchasers of Lamborghini, LondonCoach, or Maserati automobiles. In any event, since the prices of these automobiles for bygone model years are not affected by this decision, and the vehicles already purchased, the purchasers will not be affected.

**List of Subjects in 49 CFR Part 531**

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 531 is amended as follows:

## PART 531—[AMENDED]

1. The authority citation for part 531 continues to read as follows:

**Authority:** 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

2. Section 531.5(b) is amended by revising (b)(7) and by adding (b)(8) and (b)(9). The introductory text of (b) is republished to read as follows:

**§ 531.5 Fuel economy standards.**

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(7) Officine Alfieri Maserati S.p.A.

AVERAGE FUEL ECONOMY STANDARD

| Model year | Miles per gallon |
|---|---|
| 1978 | 12.5 |
| 1979 | 12.5 |
| 1980 | 9.5 |
| 1984 | 17.9 |
| 1985 | 16.8 |

(8) Lamborghini of North America

AVERAGE FUEL ECONOMY STANDARD

| Model year | Miles per gallon |
|---|---|
| 1983 | 13.7 |
| 1984 | 13.7 |

(9) LondonCoach Co., Inc.

AVERAGE FUEL ECONOMY STANDARD

| Model year | Miles per gallon |
|---|---|
| 1985 | 21.0 |
| 1986 | 21.0 |
| 1987 | 21.0 |

Issued on March 30, 1990.

Jeffrey R. Miller,

*Deputy Administrator.*

[FR Doc. 90-7728 Filed 4-3-90; 8:45 am]

BILLING CODE 6210-01-M

**49 CFR Part 533**

**[Docket No. FE-88-03; Notice 3]**

**RIN 2127-AC 51**

## Light Truck Average Fuel Economy Standards; Model Year 1992

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This notice establishes the average fuel economy standard for light trucks manufactured in model year (MY) 1992. Issuance of the standard is required by Title V of the Motor Vehicle Information and Cost Savings Act. For MY 1992, the combined standard for all light trucks manufactured by a manufacturer is 20.2 mpg. The agency is not setting optional separate two-wheel drive and four-wheel drive standards.

**DATES:** The amendment is effective May 4, 1990. The standard applies to the 1992 model year. Petitions for reconsideration must be submitted within 30 days of publication.

**ADDRESSES:** Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-0846).

**SUPPLEMENTARY INFORMATION:**

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### I. Background

Issuance of light truck fuel economy standards is required by section 502(b) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C 2002(b)). That section requires the Secretary of Transportation to set light truck fuel economy standards at the maximum feasible average fuel economy level for each model year after 1978. In determining maximum feasible average fuel economy level, the Secretary is required under section 502(e) of the Act to consider four factors: technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. See 15 U.S.C. 2002(e). Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA (41 FR 25015, June 22, 1976)). Pursuant to this authority, the light truck standards set most recently by the agency have been 20.0 mpg for MY 1990 and 20.2 mpg for MY 1991.

On January 6, 1989, NHTSA published in the **Federal Register** a Request for Comments seeking data on manufacturers' light truck fuel economy capabilities for model years (MY) 1992-94 (54 FR 436). All of the domestic light truck manufacturers responded, as did several foreign manufacturers.

After analyzing the responses to the Request for Comments and reviewing other available data, NHTSA published a notice of proposed rulemaking (NPRM) proposing ranges of standards for light truck average fuel economy standards for MY 1992-94. 55 FR 3608 (February 2, 1990). For MY 1992, the proposed range was between 20.2 mpg and 21.0 mpg. For MY 1993, the proposed range was between 20.2 mpg and 21.5 mpg. The proposed range for MY 1994 was between 20.2 mpg and 22.0 mpg. These ranges were based on the agency s tentative evaluation of manufacturer capabilities. In past light truck CAFE rulemakings, the agency has provided manufacturers with the option of dividing their light trucks into two fleets, a two-wheel drive (2WD) fleet and a four-wheel drive (4WD) fleet and meeting a separate standard for each fleet. However, the NPRM noted NHTSA's intention to discontinue setting these separate alternative standards, in favor of a single standard, beginning with MY 1992. As discussed below, the final rule adopts this approach, and sets a single combined standard for MY 1992.

NHTSA has postponed final rulemaking for model years 1993 and 1994. The limited time available to promulgate a final rule for MY 1992 has precluded a thorough consideration of issues related to light truck CAFE standards for those latter model years. The later issuance of the final MY 1993-94 standards may also have the advantage of giving NHTSA the benefit of more definitive information about amendments to the Clean Air Act and their potential impact on fuel economy for those model years.

The agency received comments from General Motors, Ford, Chrysler, Nissan, the U.S. Department of Energy, the Natural Resources Defense Council, the Western Interstate Energy Board, the Energy Conservation Coalition and the National Automobile Dealers Association. The issues raised by the commenters are discussed below.

### II. Summary of Decision for Model Year 1992

Based on its analysis, the agency is establishing a combined average fuel economy standard for MY 1992 at 20.2 mpg. Alternative separate standards for 2WD and 4WD light trucks are not being established. A decision will be reached later this year with respect to the light truck standards for MY 1993-94.

### III. Manufacturer Capabilities for MY 1992

As part of its consideration of technological feasibility and economic practicability, the agency has evaluated manufacturers' fuel economy capabilities for MY 1992-94. In making this evaluation, the agency has analyzed manufacturers' current projections and underlying product plans and has considered what, if any, additional actions the manufacturers could take to improve their fuel economy. A more detailed discussion of these issues is contained in the agency's Final Regulatory Impact Analysis (FRIA), which has been placed in the docket for this rulemaking. Some of the information included in the FRIA, including the details of manufacturers' future product plans, has been determined by the agency to be confidential business information, release of which could cause competitive harm. The public version of the FRIA omits the confidential information.

*A. Manufacturer Projections*

*General Motors:* As discussed in the NPRM, General Motors (GM) projected in March 1989 that it could achieve a combined CAFE level of 20.6 mpg in MY 1992. In its March 1990 comments on the NPRM, GM has revised its projection slightly upward, to 20.7 mpg. GM

attributes this slight increase in its MY 1992 projection to adjustments to projected powertrain and model mixes, and to minor adjustments of estimated MY 1992 fuel economy for certain models.

By comparison, in a pre-model year report submitted in December 1989, GM projected a MY 1990 CAFE of 19.6 mpg. The improvement projected by GM between MY 1990 and MY 1992 is attributable to several factors, including the introduction of the GEO Tracker to the domestic 4WD fleet, increased penetration of certain engine technologies and aerodynamic improvements, a slight weight decrease and a shift toward more efficient models, for a net improvement by MY 1992 over MY 1990 of 1.1 mpg.

However, in making its projection for MY 1992, GM noted that the actual level it achieved could be lower due to various uncertainties such as fuel prices, consumer demand for increased power and performance, new safety requirements and increasing competition in the light truck market. GM also stated that certain program risks (subject to a claim of confidentiality) could cause a decline in GM's projected MY 1992 CAFE to 20.5 mpg. GM recommended that the MY 1992 standard be set at or near the low end of the proposed range.

*Ford:* Ford projected in March 1989 that it could achieve CAFE levels of 19.9 mpg to 20.2 mpg in MY 1992. By comparison, in a pre-model year report submitted in December 1989, Ford projected a MY 1990 combined light truck CAFE of 20.1 mpg. In its March 1990 comments on the NPRM, Ford has revised its MY 1992 projection upward, to a range of between 20.1–20.5 mpg. Ford attributes the increase to several minor adjustments to its computer-generated projection, and to a number of small technology improvements. In addition, Ford's projection now takes into account the fuel economy benefits expected from the use of Fuel Economy Data Vehicles (FEDV's) in fuel economy testing. These changes raise Ford's MY 1992 projection to 20.5 mpg. However, the company believes this figure should be adjusted to account for risks and opportunities, and that when adjusted, the revised figure, corresponding to the low end of Ford's projection, is 20.1 mpg. These considerations include such factors as whether FEDV fleet testing will produce a benefit as high as that projected by Ford in its 20.5 mpg projection and by NHTSA in the NPRM (a 0.3 mpg gain), certain technological improvements achieving results higher or lower than anticipated, and potential mix shifts. Ford provides a 0.3 mpg increase based on potential FEDV testing benefits, but then factors in a 0.2 mpg risk for potential FEDV results below that level. In support of its analysis, Ford indicates that it only achieved a 0.04 mpg benefit from FEDV testing for MY 1989.

In its response to the NPRM, Ford also emphasized the potential effect on CAFE of factors beyond its control, including unforeseen but normal technological shortfalls from the technological changes listed in its comments, the potential for increased import market share and concomitant loss of domestic share in the compact truck market segment, and the pending safety requirements for light trucks. In addition, Ford indicated that continued low fuel prices could further increase the market demand for full-size light trucks, larger engines and increased optional equipment, causing a decline in its CAFE. Ford recommended that the MY 1992 standard be set at 20.2 mpg.

*Chrysler:* Chrysler projected in March 1989 that it could achieve a CAFE level of 21.0 mpg in MY 1992. By comparison, Chrysler's December, 1989 pre-model year report for MY 1990 indicated a MY 1990 CAFE of 21.6 mpg. The 0.6 mpg decline from MY 1990 to MY 1992 is a result of product changes and revised fuel economy estimates for certain models. In its March 1990 response to the NPRM, Chrysler projected its MY 1992 CAFE at 21.2 mpg. This additional projected increase is the result of several technical improvements now planned for MY 1992 along with revised fuel economy projections, which would raise Chrysler's fuel economy level 0.5 mpg. However, these changes are offset in part by revised mix projections and product changes, for a net improvement of 0.2 mpg.

Several assumptions underlie Chrysler's fuel economy projection. These include assuming that the projected model mix accurately reflects market demands, that the variability of actual fuel economy test values is no greater than anticipated, and that running changes to its products do not have an adverse cumulative effect. Chrysler also pointed to the U.S. economy as a factor which could negatively impact its CAFE if economic conditions worsen to the point that they necessitate the delay or postponement of certain plans. The company also expressed concern about the potential CAFE impact of the increased safety requirements due to be imposed on light trucks by MY 1992. Because of these factors, Chrysler recommend a standard of 20.2 mpg for MY 1992, even though its current MY 1992 projection is 21.2 mpg.

*Other Manufacturers:* Volkswagen (VW) currently offers only one light truck model, the Vanagon compact bus. Volkswagen's combined light truck CAFE for MY 1990 is estimated at 21.0 mpg. VW indicated in its response to the January 1989 questionnaire that it has no significant plans to increase fuel economy by MY 1992. The company's product plans are indefinite, but may involve a larger engine, or a front wheel drive model.

Range Rover projected its light truck CAFE for MY 1989 at 15.3 mpg in April 1989. At that time, the company did not expect any significant fuel economy improvement by MY 1992. However, the company has projected its 1990 CAFE at 16.3 mpg, 1.0 mpg higher than their MY 1989 projection.

Other foreign light truck manufacturers only compete in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above GM and Ford.

### *B. Possible Additional Actions to Improve MY 1992 CAFE*

There are additional actions which the agency analyzed to improve manufacturers' CAFE's above the levels which they currently project for MY 1992. These actions may be divided into three categories: further technological changes to their product plans, increased marketing efforts, and product restrictions.

#### 1. Further Technological Changes

The ability to improve CAFE by further technological changes to product plans is dependent on the availability of fuel efficiency enhancing technologies which manufacturers are able to apply within the available leadtime.

The agency's FRIA discusses the fuel efficiency enhancing technologies which are expected to be available by MY 1992. Limited leadtime is a constraint for MY 1992 on the increased use of these technologies. NHTSA recognizes that the leadtime necessary to implement significant improvements in engines, transmissions, aerodynamics and rolling resistance is typically about three years. Also, as the agency discussed in establishing the final rule for MY 1990–91, once a new design is established and tested as feasible for production, the leadtime necessary to design, tool, and test components such as new body sheet-metal subsystems for mass production is typically 22 to 29 months. Other potential major changes may take longer. Leadtimes for new vehicles are usually at least three years.

Given leadtime constraints, the agency does not believe that

manufacturers can achieve significant improvements in their projected MY 1992 CAFE levels by additional technological actions. Some improvements are, of course, possible due to slight increases in the penetration of more fuel efficient technology or changes in model mix. However, such changes are likely to be market driven, and are not likely to provide an increase of more than 0.1 mpg for any manufacturer.

2. Increased Marketing Efforts

As discussed in the NPRM, NHTSA believes that the ability to improve light truck CAFE by marketing efforts is relatively small. Light trucks are often purchased for their work-performing capabilities. This is particularly true for the larger, less fuel-efficient light trucks. Since the smaller light trucks cannot meet the needs of all light truck users, the manufacturers' ability to use marketing efforts to encourage consumers to purchase smaller light trucks instead of larger light trucks is limited.

As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient vehicles less expensive or less fuel-efficient vehicles more expensive. Moreover, the ability of a manufacturer to increase sales of fuel-efficient light trucks depends in part on increasing its market share at the expense of competitors or pulling ahead its own sales from the future. The ability of domestic manufacturers to make such sales increases is also affected by the strong competition in that market from Japanese manufacturers. While the Japanese manufacturers currently have an overall combined market share of about 30 percent of light trucks, their share for the smaller, more fuel-efficient light trucks is about 45 percent.

A problem with pulling ahead sales is that the manufacturers' CAFE levels for subsequent years are reduced. For example, if a manufacturer improves its MY 1992 CAFE by pulling ahead sales of fuel-efficient light trucks from MY 1993, its MY 1993 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales attributable to marketing efforts. For this reason, a manufacturer cannot continually improve its CAFE simply by pulling ahead sales.

Given these considerations, NHTSA concludes that the domestic manufacturers cannot significantly improve their MY 1992 CAFE levels through increased marketing efforts.

3. Product Restrictions

As an alternative to technological improvements, manufacturers could improve their CAFE by restricting their product offerings (e.g., limiting or deleting production of particular larger light truck models and larger displacement engines). Such product restrictions could have adverse economic impacts on the industry and the economy as a whole. The FRIA presents a scenario as an example in which GM and Ford are assumed to restrict production of sufficient numbers of their least fuel-efficient light truck models to obtain a 0.5 mpg improvement in CAFE beyond their projected capabilities for MY 1992. Under this scenario, GM could suffer a sales loss of up to 171,000 light trucks for MY 1992, while Ford could experience a sales loss of more than 168,000 light trucks in MY 1992. The potential job losses under this scenario in manufacturing and supplier industries could total 23,000 to 68,000 for MY 1992. These numbers are probably overstated, since, as GM has stated in past light truck rulemakings, and Ford has stated in its comments on this rule, product restrictions of the type envisioned above would likely be considered only after attempting marketing efforts and restricting the availability of particular engines and axle ratios. Ford and GM both submitted analyses of the sales and employment impact of setting the standard at 0.5 mpg beyond their respective capabilities. Both manufacturers' analyses show impacts much less than those projected above. However, the scenario is illustrative of the types of impacts that could result from standards that exceed manufacturers' true capabilities. In addition to the adverse impacts on the automotive industry, a wide range of businesses could be seriously affected to the extent that they could not obtain the light trucks they need for business use.

The U.S. Department of Energy (DOE) commented that NHTSA's method of analysis yields estimates of economic impacts that are so much larger than those that would actually occur, that it may not be meaningful to consider them. Although not advocating the payment of fines as an alternative to compliance, DOE suggests that the fines paid in such a circumstance would be a better context in which to evaluate the maximum negative impacts of a standard 0.5 mpg above the manufacturers' capability.

DOE's illustration is as follows: A fine of $25 per truck (which would be the fine for falling 0.5 mpg below the standard) for approximately 4 million trucks would amount to $100 million, or $230 per truck for each truck that NHTSA assumes will not be sold in the scenario presented in the FRIA. If the fines were passed on to consumers in the form of price increases, DOE estimates the net loss of truck sales would be less than 10,000 vehicles. Using NHTSA's figures on the number of jobs per vehicle, DOE calculates that the maximum net loss of jobs would be less than 2,000.

NHTSA does not dispute DOE's analysis for the case where manufacturers choose to pay penalties rather than comply with a standard beyond their capability. However, NHTSA's analysis focuses on the maximum impacts that would occur if manufacturers chose to comply with the standard through product restrictions, or were forced to so comply because marketing or other measures were unsuccessful.

The agency believes it would be a meaningless exercise to estimate employment losses based on the assumption that manufacturers pay fines rather than restrict production to meet standards. No fuel savings would result from setting higher standards if manufacturers paid fines instead of actually raising their CAFE values. Under this scenario, higher fuel economy standards would merely result in higher truck prices, lower sales, and increasing unemployment, without any energy conservation benefits. This scenario is not appropriate for the agency to consider. Moreover, the agency believes the statute directs us to consider the maximum fuel economy level that manufacturers can *achieve*, rather than the impact of penalties paid if the standards are not achieved.

Ford's comments expressed concern that establishing a CAFE standard beyond its capability could result in a substantial loss of sales, adverse employment effect, and economic hardship. The company is also concerned that product restrictions could have a substantial impact on Ford's competitiveness by restricting the availability of certain engines in larger models, and possibly by requiring the deletion of some full-size products entirely. The company also stated that market research data show that the vehicles most likely to be restricted are used for a combination of commercial as well as personal uses.

In its comments, GM expressed concern about the impact of product restrictions on consumer choice and industry employment. GM also provided data showing the impact product restrictions would have on the

availability of various models in its light truck fleet.

Given these considerations, NHTSA concludes that significant product restrictions should not be considered as part of manufacturers' capabilities to improve MY 1992 CAFE levels.

*C. Manufacturer-Specific CAFE Capabilities*

As discussed later in this notice, NHTSA is directed to take "industrywide considerations" into account in setting fuel economy standards. In carrying out this direction, the agency focuses on the least capable manufacturer with substantial shares of light truck sales. For MY 1992, the agency has determined that Ford is the least capable manufacturer with a substantial share of sales. During MY 1989, Ford had a 26 percent share of combined light truck sales. By comparison, GM had a 33 percent share, and Chrysler a 21 percent share. VW does not have a substantial share of industry sales. Its MY 1989 market share was 0.08 percent.

GM, Ford and Chrysler's MY 1992 CAFE projections are subject to a number of uncertainties which are discussed above. NHTSA has fully considered these uncertainties in determining manufacturer-specific capabilities.

*Ford:* As discussed above, in March 1989, Ford projected a MY 1992 CAFE of 19.9 mpg to 20.2 mpg. In its March 1990 comments, Ford projects a CAFE of 20.1 mpg to 20.5 mpg. This range is the result of risks and opportunities which Ford believes could lead to a decrease of 0.4 mpg. Many of the technical risks and opportunities are each quite small. The agency believes they are likely to result in a small net gain of under 0.1 mpg. A more substantial uncertainty is the potential benefit, discussed above, for Ford to have additional vehicles tested as part of the fuel economy data vehicle (FEDV) program. In the NPRM, NHTSA stated that Ford could obtain a 0.3 mpg benefit from this test procedure, and adjusted its projection of Ford's capability accordingly. In Ford s comments on the NPRM, the company takes issue with NHTSA's analysis, pointing to its MY 1989 FEDV benefit of only 0.04 mpg. Ford also argued that correlation testing can have negative results.

Ford's CAFE projection for MY 1992 also shows a risk of nearly 0.3 mpg due to a potential mix shift toward less-efficient models. The agency believes this risk, although certainly possible, may be overstated.

On the other hand, the agency does not consider it likely that Ford can achieve the 20.5 mpg upper end of its projection for MY 1992. NHTSA acknowledges that Ford's MY 1992 CAFE could well be subject to at least some risk from both unfavorable mix shifts and FEDV testing shortfalls. The agency concludes that the maximum feasible CAFE for Ford in MY 1992 is 20.2 mpg. The agency also concludes that there is insufficient leadtime for Ford to introduce new programs or technologies beyond those already planned to increase its MY 1992 CAFE.

*General Motors:* In March, 1989, GM projected a MY 1992 CAFE of 20.6 mpg. In its March 1990 comments on the NPRM. GM revised its projection upward to 20.7 due to minor technical and mix adjustments. However, GM also indicated several uncertainties that could lower its projection by as much as 0.2 mpg. These risks were tied to mix shifts toward less efficient vehicles.

As with Ford's projection, NHTSA believes that GM's risk estimate is likely overstated. The agency concludes that GM is capable of achieving 20.8 mpg in 1992. Its CAFE can be increased by 0.1 mpg above its projection to 20.8 mpg if GM would drop the low-volume offering of the inefficient 7.4 litre C10 pickup.

DOE commented that the upper end of the CAFE ranges proposed in the NPRM (21.0 mpg for MY 1992) were achievable and represented the maximum feasible level. DOE's analysis was based on a linear interpolation between a base CAFE for each domestic manufacturer for MY 1987 and DOE's analysis of the manufacturers' capabilities for MY 1995. This methodology assumes both that DOE's MY 1995 projection is actually achievable and that each manufacturer has the capability to improve each year by the same fixed amount (about 0.4 mpg per model year). NHTSA questions both assumptions. Based on the manufacturers submissions, GM will improve about 1.1 mpg between MY 1990 and MY 1992, but a large part of this is due to an unfavorable model mix in MY 1990 due to a short model year for compact pickups and utility vehicles. Ford will improve by 0.4 mpg and Chrysler will *decline* by 0.4 mpg between MY's 1990 and 1992.

The agency does not believe that DOE's extrapolation of CAFE values is a meaningful method to determine individual manufacturer capabilities for specific years, nor is it as accurate as an examination of product plans in establishing short term capabilities for individual manufacturers. NHTSA has provided DOE with comments on the draft report on which the MY 1995 projection is based, and does not believe that all issues have been resolved between DOE and NHTSA. NHTSA's concerns include the use of an old baseline which is now significantly out of date. The changes to the baseline that have occurred are due to both the introduction of new technology and market driven demand for a different model mix and higher performance. These changes make it difficult, if not impossible, for manufacturers to return to DOE's linear path of improvements, particularly given the leadtime remaining before the start of the 1992 model year. The agency is not convinced that the level of fuel economy improvements cited by DOE is either technologically achievable or economically practicable.

**IV. Other Federal Standards**

In determining the maximum feasible fuel economy level, the agency must take into consideration the potential effects of other Federal standards. The following section discusses other government regulations, both in process and recently completed, that may have an impact on fuel economy capability for MY 1992. For this final rule, the agency has not included any discussion of the impacts of regulations that take effect in MY 1993 or 1994. Comments received on those issues will be addressed during final rulemaking for MY 1993–94.

1. Safety Standards

As discussed by the FRIA, NHTSA has evaluated several safety rulemakings for their potential impacts on light truck fuel economy in MY 1992. These include revisions to FMVSS Nos. 208; *Occupant crash protection,* 204; *Steering control rearward displacement,* 202; *Head restraints,* 108; *Lamps, reflective devices and associated equipment,* 214; *Side door strength,* and 216; *Roof crush resistance-passenger cars.* In addition, the agency has evaluated proposed revisions to 49 part 523, addressing vehicle classification for safety standards.

*FMVSS No. 208.* The agency published a final rule on November 23, 1987 (52 FR 44898) which requires that manual lap/shoulder belts installed at the front outboard seating positions of light trucks comply with the dynamic testing requirements of Standard No. 208. The rule applies to multipurpose passenger vehicles and trucks with a gross vehicle weight rating of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less, and is effective September 1, 1991. In the MY 1990–91 light truck fuel economy rulemaking (53 FR 11074, April 5, 1988), the agency concluded that this rule was unlikely to have a significant negative impact on

fuel economy capabilities. Some existing light truck designs currently meet the requirements, and others may be able to meet the requirements with relatively minor changes.

In its response to NHTSA's request for comments on manufacturers' MY 1992–94 light truck fuel economy capabilities, Ford indicated that compliance with the dynamic testing requirement could increase the weight of some of its trucks by 35 to 150 pounds, and require other changes to support customer and competitive performance requirements.

In its comments on the MY 1992–94 fuel economy NPRM, Ford reiterated its penalty estimates, and also argued that NHTSA has not properly characterized the CAFE effect of safety standards such as Standard No. 208. Ford argues that since some of the effects of standards are included in the manufacturers fuel economy estimates, the manufacturers are not being credited with application of fuel economy improvements that are offset by the weight of additional safety requirements.

Chrysler, while noting that the added weight to meet increased safety requirements for MY 1992 had resulted in a reduction of its fuel economy projection for MY 1992, did not specify an estimated fuel economy impact specifically for the dynamic testing requirement.

In its comments on the fuel economy NPRM, GM stated that the combined effects of the dynamic testing requirement and Standard No. 204 would result in weight increases from 28–57 pounds. However, GM noted that these effects are included in its MY 1992 projection.

Since the agency has accepted the manufacturers' weight projections for this rule, NHTSA believes no specific adjustment to their projections is needed to consider the impact of the dynamic testing requirement. The agency agrees with Ford's position that maintaining a constant fuel economy standard, at a time when safety and emissions standards are becoming stricter, effectively increases the stringency of the fuel economy standard. However, the agency carefully considers the impacts of safety and emissions requirements when setting CAFE standards.

In November 1988, NHTSA proposed to require all manufacturers to install lap/shoulder belts in all forward-facing rear outboard seating positions in passenger cars, light trucks, multipurpose vehicles, and small buses. 53 FR 47982 (November 29, 1988). The proposed effective dates were September 1, 1989 for passenger cars other than convertibles, and September 1, 1991 for convertibles, light trucks, multipurpose passenger vehicles, and small buses.

NHTSA published a final rule (54 FR 25275, June 14, 1989) requiring all passenger cars manufactured after December 11, 1989 to be equipped with the rear outboard lap/shoulder belts. Most recently (54 FR 46257, November 2, 1989), the agency published a final rule extending these requirements to light trucks and multipurpose vehicles effective September 1, 1991. The November 1988 NPRM noted that manufacturers planned to voluntarily install the rear-seat lap/shoulder belts in virtually all vehicles by the effective date proposed in the rule for light trucks. The projected weight increases were 1.1–5.5 pounds per vehicle, depending on vehicle type.

In its March 1990 comments on the fuel economy NPRM, Ford claimed this requirement would result in weight increases from 17–30 pounds per vehicle, including secondary weight. These increases were included in Ford's MY 1992 CAFE projections.

Ford's weight increases are substantially higher than those included in the MY 1992–94 CAFE NPRM because the agency erroneously used incorrect weight figures in that notice. NHTSA's revised estimate, using figures from the final rule on rear lap/shoulder belts, is a range of 8–40 pounds per vehicle.

Neither GM nor Chrysler provided specific estimates of the fuel economy impact of this standard.

Because NHTSA has not altered the weight projections provided by manufacturers, no adjustment in fuel economy projections is necessary to account for the impact of this standard.

*FMVSS No. 204.* NHTSA has also published a final rule extending the applicability of FMVSS No. 204; *Steering control rearward displacement* to cover additional light trucks. This rule, published November 23, 1987 (52 FR 44893), and effective September 1, 1991, extends the standard to light trucks with an unloaded vehicle weight of 4000 to 5500 pounds. While NHTSA indicated its belief that the proposal would not significantly affect weight (and hence CAFE), GM and Ford argued in their comments on the proposed rule that there could be significant weight impacts. However, the agency concluded in the final rule that the steering system modifications necessary to comply with the standard would entail only minor modifications that would not have significant additional weight or fuel economy impacts.

In comments responding to the fuel economy NPRM, Ford agreed with NHTSA that weight impacts from this standard were minimal. As discussed above, GM indicated that it had combined the impacts of this rule with those of the dynamic testing requirement. Chrysler only indicated that its projection included the impact of this standard. Since NHTSA has not altered the weight projections provided by the manufacturers, no adjustments to fuel economy projections to consider the impact of this standard are necessary.

*FMVSS No. 202.* On September 25, 1989, NHTSA published a final rule (54 FR 39183) to amend Standard No. 202 to extend the Standard's head restraint requirement to light trucks and multipurpose passenger vehicles effective September 1, 1991. This rule would have a very minor effect on MY 1992 light truck fuel economy. In the proposed rule, NHTSA estimated that it would add an average of seven pounds to each affected vehicle. The agency has calculated that this increase would reduce measured fuel economy by approximately 0.03 mpg. However, the agency estimates that 30 percent of light trucks are already equipped with head restraints, and that the effect on the fleet would be reduced to about 0.02 mpg.

Ford and Chrysler indicated in comments on the NPRM that they planned to equip all of their light trucks with head restraints by September 1, 1991. Thus, their CAFE projections for MY 1992 already include any negative weight effects. GM indicated in its comments on the head restraint NPRM that it planned to have head restraints on 80 percent of its light truck fleet by MY 1992, with restraints being phased in for the remainder of the fleet during MY 1993–94. Under the final rule on head restraints, GM will need to add head restraints to 20 percent of its MY 1992 light trucks. NHTSA has calculated that these changes could reduce GM's CAFE projection by 0.005 mpg.

In its comments on the fuel economy NPRM, GM stated that the weight impact of head restraints has already been considered for all trucks except the S/T and C/K models in MY 1992. The company indicated that these models would suffer a 4 lb. weight penalty. Ford estimated that the penalty would typically be 10 lbs. per vehicle. Chrysler provided no specific weight estimate. Each of these manufacturers indicated that they had considered the effect of Standard No. 202 in their MY 1992 projections. Since NHTSA has not altered the weight projections provided by the manufacturers, no adjustment to their fuel economy projections is needed.

*FMVSS 108.* Changes to the agency's lighting standard permit the use of smaller sealed beam headlamps, replaceable light source headlamps and lower mounting height. All of these changes should give manufacturers greater design freedom to achieve lower aerodynamic drag and some weight reductions, which could have positive impacts on CAFE. However, the agency does not have any data to estimate the reduction in drag that may be economically achievable for light trucks as a result of these changes. These positive effects may be counterbalanced by possible slow consumer acceptance of light truck styling for certain models which have been influenced by aerodynamic considerations. However, Ford indicated in its comments on the fuel economy NPRM that the changes to Standard 108 may permit more aerodynamic front end designs, and provide some opportunity for weight reduction.

The agency is considering whether to propose requiring new light trucks to be equipped with Center High Mounted Stop Lamps (CHMSLs). However, it is unlikely at this time that NHTSA would propose to make the requirement effective in MY 1992. Ford noted in its comments that if such a requirement were adopted, it would result in a weight increase of approximately two pounds.

*FMVSS 216.* On November 2, 1989 (54 FR 46275), NHTSA published an NPRM proposing to extend the roof crush protection requirements of Standard No. 216 to light trucks and multipurpose passenger vehicles with GVWRs of 10,000 pounds or less, with a proposed effective date of September 1, 1991. The NPRM estimated that there is already widespread voluntary compliance with the requirements of Standard No. 216. NHTSA tentatively concluded in the fuel economy NPRM that since essentially all vehicles already comply with the proposed requirement, and only modest increases are anticipated for the few vehicles which do not meet the proposed performance levels, the extension of Standard No. 216 to light trucks is not expected to affect MY 1992 fuel economy capabilities.

In its response to the fuel economy NPRM, Ford commented that while most trucks meet the proposed crush standards, the roofs of most truck *lines* must be changed to enable all trucks to comply with the proposed standard. Ford estimated that this would add 2 to 10 pounds to the weight of affected vehicles. GM indicated that certain of its vehicles already comply, and that most other models would suffer a weight penalty of nine pounds. Chrysler provided no specific estimate on the impacts of complying with the roof crush requirements.

Because each of the companies has included the effect of FMVSS 216 in its fuel economy projection, no adjustment to manufacturer fuel economy projections is needed to account for the impact of this standard.

*FMVSS 214.* On December 22, 1989, the agency published an NPRM (54 FR 52826), proposing to extend the existing side-door strength requirements of Standard No. 214 to trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less, effective September 1, 1992.

NHTSA has estimated that the proposal, if adopted, could result in an average weight increase of 18–20 pounds per vehicle not including possible secondary weight, or 31–35 pounds including possible secondary weight. If the requirement takes effect as proposed, it would have no impact on MY 1992 fuel economy capabilities, except for new model introductions in prior model years that were designed to meet the proposed requirements. No manufacturers raised compliance with Standard 214 as having an impact on MY 1992 CAFE levels.

*Vehicle classification.* NHTSA proposed to establish a new vehicle classification system for determining the applicability of the Federal Motor Vehicle Safety Standards on October 17, 1988 (53 FR 40463). The proposed rule would not affect the classification of vehicles for fuel economy standards. The agency is not proposing to alter the definitions of "passenger automobile" or "light truck" as they appear in 49 CFR Part 523. However, vehicles that are defined as light trucks for the purpose of fuel economy standards would be the type of vehicle most affected by the proposed classification changes. Vehicles classified as light trucks for fuel economy standards include many vehicles currently classified as trucks or MPVs for the purpose of safety standards. However, as the agency proposed to amend its safety regulations in such a way as to ensure that re-classification, by itself, caused no change in the applicability of safety standards, adoption of the proposed classification rule would have no impact on manufacturers' fuel economy capabilities for MY 1992.

2. Noise Standards

The agency is not aware of any plans on the part of EPA to promulgate noise regulations during the MY 1992 time period, and therefore does not anticipate any attendant fuel economy impacts.

3. Emission Standards

Because of the pending legislation to amend the Clean Air Act, the potential fuel economy impact for a number of possible environmental requirements cannot be determined at this time. The primary impacts of the requirements contained in the proposed legislation would be concentrated in MY 1994 and later years. The Environmental Protection Agency (EPA) has two rulemakings either in progress or completed which could impact light truck fuel economy during MY 1992. These include a final rule addressing diesel particulate matter, and a proposed rule addressing evaporative emissions.

*Diesel Particulate Matter.* On October 31, 1988, EPA published a final rule at 53 FR 43870 amending the particulate standards for light duty diesel trucks with a loaded vehicle weight of more than 3,750 pounds. The amended standard is 0.13 gm/mi for model years 1991 and beyond. This rule was the result of a proposal in response to a petition from GM which outlined a plan to develop control technology to substantially reduce particulate emission from current control levels. However, in its comments on the MY 1990–91 proposed light truck standards, GM indicated that it did not know what effect on fuel economy would result from the EPA rulemaking, but stated that "* * * any required technology such as a particulate trap may adversely impact fuel economy." GM's MY 1992 light truck CAFE projections, however, do not indicate that the new standard is responsible for any loss of fuel economy. Thus, NHTSA has not made any adjustment to GM's fuel economy estimates to reflect the more stringent particulate standard. Neither Chrysler nor Ford have raised concerns about the fuel economy impact of the new standard.

*Evaporative emissions.* On January 19, 1990, EPA issued an NPRM proposing modifications to test procedures for control of evaporative emissions from running losses (55 FR 1914). This proposal would affect light duty vehicles fueled by gasoline or methanol. In its comments on the fuel economy NPRM, Chrysler mentioned a potential fuel economy penalty for on-board vapor recovery. Since it appears unlikely that the requirements, if adopted, would go into effect by MY 1992, this impact has not been considered for purposes of this final rule.

4. EPA Test Procedures

*Gear shift indicator lights.* During the MY 1990–91 fuel economy rulemaking, EPA issued a letter to manufacturers proposing to eliminate one of the two methods currently authorized to determine the fuel economy benefits of shift indicator lights. These dashboard lights are designed to inform drivers about the optimal speed, from a fuel economy standpoint, for shifting gears. EPA proposes to eliminate the driver usage rate survey, the method preferred by GM as a "more representative credit for actual shift indicator light usage than the on-road survey," and allow only an on-road shift light survey. At this point, EPA has not made a decision on this issue. No manufacturers raised the issue of shift indicator lights in their comments in response to NHTSA's request for comments on manufacturers' MY 1992–94 light truck fuel economy capabilities. In its comments on the MY 1992–94 fuel economy NPRM, GM stated that its light truck CAFE could be adversely affected if EPA were to eliminate the driver usage rate survey. However, since EPA has not made a decision on the issue, NHTSA has not made any adjustment to fuel economy capabilities to consider this factor.

5. Other Standards

*Asbestos.* On January 29, 1986, EPA proposed to prohibit the "manufacture, importation, and processing of asbestos in certain products," and the phasing out of asbestos in all other products. The implication of this rulemaking for motor vehicles would be to eliminate the use of asbestos in brake linings, clutch facings, automatic transmissions and gaskets.

On July 12, 1989, EPA published a final rule (54 FR 29460) phasing in a prohibition of asbestos in almost all products. Asbestos brake linings are banned for use by original equipment manufacturers effective MY 1994. Asbestos clutch facings, automatic transmission components and virtually all asbestos gaskets are banned as of August 25, 1993. In its comments on the MY 1990–91 light truck fuel economy rulemaking, GM indicated that the phase out would increase vehicle weight approximately 5 pounds and reduce CAFE. However, GM provided no substantiation for its estimates. In response to NHTSA's request for comments on MY 1992–94 manufacturers' CAFE capabilities, no manufacturer indicated that this rule would have any potential impact on MY 1992 light truck fuel economy. However, in its comments on the fuel economy NPRM, GM indicated that while most necessary changes had been implemented, and therefore are included in the company's CAFE projections, certain changes had not yet been made. Specifically, the company anticipates a seven pound increase on the S/T models beginning in MY 1992. This increase will have a negligible impact (less than .01 mpg) on GM's MY 1992 capability. Because Ford is the least capable manufacturer for MY 1992, this has no impact on the level of the standard.

## V. The Need of the Nation to Conserve Energy

The United States imported 15 percent of its oil needs in 1955. The import share had reached 35.8 percent by 1975, the year the Energy Policy and Conservation Act was passed, and peaked at 46.5 percent in 1977, at a cost of $74 billion (stated in 1988 dollars). While the import share of total petroleum supply declined after that year, the cost continued to rise to a 1980 peak of $102 billion (1988 dollars).

While the import share of petroleum supply declined through 1985, it has been increasing since that time. In 1985, the import share was 27.3 percent at a cost of $50 billion (1988 dollars). For 1988, net imports were 37.0 percent of total supply. For 1989, net imports were 43.5 percent of total supply. For January, 1990, net imports reached 47.1 percent of total supply. Due to sharply lower petroleum prices, however, the value of imports declined from 1985 to 1988, from $50 billion to $37 billion (1988 dollars). Imports from OPEC also declined through 1985 but have been rising since that time. For 1989, OPEC imports accounted for about 52 percent of total import supply, up from almost 48 percent for 1988.

The nation's dependence on petroleum net imports since 1975 is summarized in the following table:

| Year | Net imports as percent of U.S. petroleum products supplied | |
|---|---|---|
| | From OPEC (percent) | From all countries (percent) |
| 1975 average | 22.6 | 36.8 |
| 1977 average | 33.5 | 46.4 |
| * * * * * | | |
| 1985 average | 12.3 | 28.7 |
| 1988 average | 21.5 | 40.2 |
| 1989 average | 25.2 | 43.5 |

The current energy situation and emerging trends point to the continued importance of oil conservation. The United States now imports a higher percentage of its oil needs than it did during 1975, the year EPCA was passed, and the percentage of its oil supplied by OPEC is similar to that of 1975. Oil continues to account for well over 40 percent of U.S. energy use, and 97 percent of the energy consumed in the transportation sector. While the U.S. is the second-largest oil producer, it contains only three percent of the world's proved oil reserves. Moreover, proved reserves in the U.S. have declined from a peak of 39 billion barrels in 1970 to 27 billion barrels in 1987.

According to the Energy Information Administration's (EIA) 1989 Annual Energy Outlook, domestic production for its "base case" projection is expected to decline from 10.5 MMB/D in 1988 to 8.6 MMB/D in 1995, and 8.5 MMB/D in 2000. Net imports are projected to increase from 6.3 MMB/D in 1988 to 9.3 MMB/D in 1995 and 10.2 MMB/D in 2000. Thus, as a percentage of total U.S. petroleum use, EIA expects imports to rise to 52 percent of total supply in 1995 (exceeding the previous 1977 high of 46.4 percent) and 55 percent in 2000.

In its comment to the docket for NHTSA's 1990 passenger car CAFE rulemaking, the Department of Energy (DOE) emphasized several points about transportation's role in U.S. oil use and the importance of rising fuel efficiency. DOE noted that the 11 MMB/D used by the transportation sector in 1986 is almost 80% of total U.S. fuel use of oil and over 90% of the critical light product use. Thus, DOE wanted NHTSA to consider the fact that any significant moderation in growing oil demand will require large transportation efficiency improvements. DOE also emphasized that the 1987 EIA oil demand forecasts assume that average new car efficiency will continue to improve, which DOE said does not seem likely given fuel economy trends (at least to the levels assumed by EIA), and that even with these projected increases in fuel efficiency, U.S. oil demand is projected to increase over 1.5 MMB/D by 2000.

The level of petroleum imports is only one aspect of the total energy conservation picture. Under EPCA and NEPA, for example, national security, energy independence, resource conservation, and environmental protection must all be considered.

In March 1987, the Department of Energy submitted a report to the President entitled "Energy Security." NHTSA believes that the following quotation from that report represents a useful summary of the national security and energy independence aspects of the current energy situation:

> Although dependence on insecure oil supplies is * * * projected to grow, energy security depends in part on the ability of importing nations to respond to oil supply

disruptions; and this is improving. The decontrol of oil prices in the United States, as well as similar moves in other countries, has made economies more adaptable to changing situations. Furthermore, the large strategic oil reserves that have been established in the United States (and to a lesser extent, in other major oil-importing nations) will make it possible to respond far more effectively to any future disruptions than has been the case in the past.

The current world energy situation and the outlook for the future include both opportunities and risks. The oil price drop of 1986 showed how consumers can be helped by a more competitive oil market. If adequate supplies of oil and other energy resources continue to be available at reasonable prices, this will provide a boost to a world economy. At the same time, the projected increase in reliance on relatively few oil suppliers implies certain risks for the United States and the free world. These risks can be summarized as follows: If a small group of leading oil producers can dominate the world's energy markets, this could result in artificially high prices (or just sharp upward and downward price swings), which would necessitate difficult economic adjustments and cause hardships to all consumers.

Revolutions, regional wars, or aggression from outside powers could disrupt a large volume of oil supplies from the Persian Gulf, inflicting severe damage on the economies of the United States and allied nations. Oil price increases precipitated by the 1978–79 Iranian revolution contributed to the largest recession since the 1930's. Similar or larger events in the future could have far-reaching economic, geopolitical, or even military implications.

Light truck registrations nearly doubled between 1973 and 1986 and light truck sales are projected to increase 21 percent over the 1987–2000 period, compared to 14 percent for passenger cars. The light truck fleet's share of total oil consumption increased steadily from 6.4 percent in 1973 to 8.9 percent in 1980 to 12.1 percent in 1986 and to 12.3 percent in 1988. This increase in the light truck fleet's share of fuel consumption took place even as the average fuel economy of the on-road fleet of light trucks increased from an estimated 10.5 mpg in 1973 to 13.4 mpg in 1988. Clearly, light truck fuel economy will be an increasingly important determinant of the nation's level of petroleum consumption.

Information provided to NHTSA by the Department of Energy indicates that light trucks last longer (14.9 years versus 10.9 years) than passenger cars. Federal Highway Administration data indicate light trucks are driven farther annually (11,846 miles versus 10,119 miles) than passenger cars.

All of these factors result in the conclusion that improved light truck fuel economy contributes to the nation's efforts at conserving fuel. Light trucks meeting the standards proposed by this notice would be more fuel-efficient than the average vehicle in the current light truck fleet in service, thus making a positive contribution to petroleum conservation.

## VI. Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 502(b) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. As with earlier CAFE rulemakings, NHTSA has considered and weighed all four statutory factors of section 502(e) in reaching its decision.

### *A. Interpretation of "Feasible"*

Based on definitions and judicial interpretations of similar language in other statutes, the agency has in the past interpreted "feasible" to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy level must: (1) Be capable of being done and (2) be at the highest level that is capable of being done, taking account of what manufacturers are able to do in light of technological feasibility, economic practicability, how other Federal motor vehicle standards affect average fuel economy, and the need of the nation to conserve energy.

### *B. Industrywide Considerations*

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industrywide basis. Legislative history may be used as an indication of Congressional intent in resolving ambiguities in statutory language. The agency believes that the below-quoted language provides guidance on the meaning of "maximum feasible average fuel economy level."

The Conference Report to the 1975 Act (S. Rep. No. 94–516, 94th Cong., 1st Sess., 154–5 (1975)) states:

> Such determination [of maximum feasible average fuel economy level] should take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer * * *."

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industrywide considerations into account in determining the maximum feasible average fuel economy level.

NHTSA has consistently taken the position that it has a responsibility to set light truck standards at a level that can be achieved by manufacturers whose vehicles constitute a substantial share of the market. See 49 FR 41251, October 22, 1984. The agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler. 45 FR 20871, 20876; March 31, 1980. However, as the agency noted in deciding not to set the MY 1983–85 light truck standards above Ford's level of capability, Chrysler had only 10–15 percent of the light truck domestic sales, while Ford had about 35 percent. 45 FR 81593, 81599; December 11, 1980.

### *C. Petroleum Consumption*

The precise magnitude of energy savings associated with alternative light truck fuel economy standards is uncertain. The FRIA provides calculations for the hypothetical lifetime fuel consumption of the MY 1992 domestic light truck fleets assuming those same fleets could and would achieve alternative CAFE levels. For example, assuming that manufacturers could achieve an average CAFE of 21.0 mpg for the MY 1992 domestic light truck fleet but instead achieved 20.2 mpg with the same number of sales, there could be a maximum difference in fuel consumption of 638 million gallons over the lifetime of the model year's fleet.

However, it is possible that manufacturers may be able to achieve particular higher CAFE levels only by restricting the sales of their large light trucks. If this occurred, consumers might tend to keep their older, less-fuel efficient light trucks in service longer. Also, to the extent that a particular manufacturer might find it necessary to

restrict sales of its large light trucks, consumers may be able to transfer their purchases of those same types of vehicles to another manufacturer which may have less difficulty meeting the CAFE standard. Thus, the agency believes that the actual impacts, if any, on energy consumption of alternative higher fuel economy standards, would be less than the theoretical calculations comparing different levels of industrywide CAFE.

*D. The MY 1992 Standards*

Based on its analysis described above and on manufacturers' projections, the agency concludes that the major domestic manufacturers can achieve the combined fuel economy levels listed in the following table:

| Manufacturer | Approximate market share (MY 1989) (percent) | Combined CAFE |
|---|---|---|
| Chrysler | 21.0 | 21.2 mpg. |
| GM | 33.0 | 20.8 mpg. |
| Ford | 26.0 | 20.2 mpg. |

As indicated above, foreign manufacturers other than Volkswagen and Land Rover compete in only the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above those of GM, Ford and Chrysler, which offer full ranges of light truck models.

Unlike past years, the agency is not setting separate 2WD and 4WD standards as an alternative to the combined standard. The agency's decision on this issue is discussed in detail below.

The setting of maximum feasible fuel economy standards, based upon consideration of the four required factors, is not a mere mathematical exercise but requires agency judgment. Based on the preceding analysis and discussion, the agency concludes that Ford is the least capable manufacturer with a substantial share of sales and that 20.2 mpg is the maximum feasible combined standard for the 1992 model year. For the reasons discussed below, this level balances the potential petroleum savings associated with higher standards against the difficulties of manufacturers facing potentially higher standards.

Notwithstanding the projected product plans that the manufacturers have provided the agency and that are discussed, there is the potential for some decline in each manufacturer's CAFE. The above analysis has not covered the potential of mix shifts because of the possible adverse financial consequences to manufacturers and national employment of any large change in CAFE that is created by forced mix shifts. Nevertheless, the market may dictate changes in the light truck mix in response to fuel prices and availability. Continuing low fuel prices and plentiful supply may result in an increased demand for power and performance, while an unanticipated substantial increase in fuel prices could increase demand for more fuel-efficient models.

NHTSA believes there are serious questions whether a standard set at a level above Ford's capability would be consistent with the requirement that standards be set taking industrywide considerations into account, given that company's market share.

The precise effects on petroleum conservation of a higher standard are uncertain. The maximum theoretical additional energy savings associated with a standard set at a higher level can be determined by comparing hypothetical situations where GM and Ford would have combined average fuel economy levels of 21.0 mpg. Since most other manufacturers in the industry project MY 1992 CAFE above that of GM's capability, a standard set at 21.0 mpg would not be expected to affect the petroleum consumption of trucks manufactured by that part of the industry. The maximum difference in total gasoline consumption between these two hypothetical situations over the lifetime of the MY 1992 fleet would be 638 million gallons. The maximum yearly impact on U.S. gasoline consumption would be 74 million gallons, or roughly six hundredths of one percent of total motor vehicle gasoline consumption.

The agency believes, however, that any gasoline savings associated with a higher standard would actually be less than indicated by this projection. While such a standard would provide added incentive for GM to achieve its maximum fuel economy capability, it is not clear in light of earning possible carryforward/carryback credits that they might not achieve this increase anyway. Ford could not likely improve its CAFE other than by restricting sales of its larger light trucks and engines. To the extent that would-be purchasers of such vehicles and engines transferred their purchases to GM and Chrysler without those companies otherwise changing their product plans, there could be little or no effect on overall petroleum consumption.

A higher standard than 20.2 mpg could result in serious economic difficulties for Ford. Given leadtime constraints, NHTSA believes that the primary potential fuel-efficiency enhancing actions that Ford or any other manufacturer would consider in response to a higher standard would consist of marketing actions. For the reasons discussed earlier in this notice, however, the agency does not believe that marketing actions can be relied upon to significantly improve fuel economy. If such marketing actions were unsuccessful in whole or in part, Ford would likely have to engage in product restrictions, including limiting the sales of larger engines and/or vehicles to improve its fuel economy. Such product restrictions could result in adverse economic consequences for Ford, its employees and the economy as a whole and limit consumer choice, especially with regard to the load carrying needs of light truck purchasers.

Given Ford's 26 percent share of the light truck market in MY 1989, its capability has a significant effect on the level of the industry's capability and, therefore, on the level of the standards. The agency believes that the 20.2 mpg standard balances the potentially serious adverse economic consequences associated with market and technological risks against potential fuel economy improvements. The agency concludes, in view of the statutory requirement to consider specified factors, that the relatively small and uncertain energy savings associated with setting a standard above Ford's capability would not justify the potential economic harm to that company and the economy as a whole.

In addition to the comments discussed above, the agency received comments from Nissan, the Natural Resources Defense Council (NRDC), the Energy Conservation Coalition (ECC), the Western Interstate Energy Board (WIEB) and the National Automobile Dealers Association (NADA).

The ECC, in comments endorsed by NRDC, argued that in setting the CAFE standards, NHTSA should double the 3% annual rate of increase provided by the high end of the ranges proposed. This would result in an MY 1992 CAFE of 22.2 mpg, and an MY 1994 CAFE of 25 mpg. The ECC also stated it is essential to set standards now for model years after 1994 to provide manufacturers with adequate leadtime to achieve higher fuel economy levels. The comments claimed these increases would be cost-effective, and listed a number of potential technological improvements available to manufacturers. Finally, ECC provided statistics on the potential fuel savings achievable through higher CAFE standards for light trucks, and emphasized the U.S. transportation

sector's role as a source of greenhouse gas emissions.

ECC does not explain the basis for their suggested levels. The commenter did not demonstrate why these levels would be feasible. As explained above, the agency has determined that the maximum feasible level for MY 1992 is 20.2 mpg. In addition, the short statutory deadline makes it impractical for the agency to set standards beyond MY 1992 at this time. NHTSA also notes that much of the technology listed in ECC's comments has already been extensively incorporated in the light truck fleet. The agency has included an analysis of carbon dioxide emissions associated with this CAFE standard in the Environmental Assessment prepared by the agency for this rulemaking and available from the Docket Section. Finally, the agency notes that the fuel economy levels and timeframes for their implementation advocated by ECC exceed the scope of the NPRM.

NRDC, while endorsing the ECC comments, also expressed concern that the NPRM did not discuss NHTSA's decision to undertake a programmatic Environmental Impact Statement (EIS) to examine effects of the CAFE program. NRDC believes the agency's handling of fuel economy issues violates the National Environmental Policy Act, and that the agency has not adequately analyzed the relationship between fuel efficiency and carbon dioxide emissions. In response, NHTSA notes that it has provided an analysis of fuel economy and carbon dioxide emissions in its Environmental Assessment for this rulemaking, and is continuing its work toward the publication of a programmatic EIS for the CAFE program. To that end, the agency has issued a notice of intent to prepare a programmatic EIS (54 FR 37702, September 12, 1989), and is currently analyzing comments received in response to that notice.

WIEB supports higher fuel economy standards than those proposed, although it does not provide specific levels. The comments note that the growing role of light duty trucks is a primary cause of the stagnation in the fleetwide CAFE of all light duty vehicles. WIEB argues that the agency has not considered the economic implications of failing to increase light truck CAFE, and that domestic jobs will be lost as rising fuel prices shift demand toward more efficient, imported light trucks.

NHTSA believes that it has taken into account the economic implications of not setting higher standards. This issue is discussed in detail in the FRIA available from the Docket. The agency disagrees with WIEB's assumption that significantly higher fuel prices are likely during the period affected by this rulemaking, and that this will result in significantly increased demand for more fuel-efficient vehicles. See the FRIA for a more detailed discussion of future fuel prices. The agency also disagrees that domestic jobs will be lost as a result of its decision. In response to apparent consumer demands, import manufacturers are now introducing larger, more powerful and less efficient light trucks. This trend gives no indication of reversing in the near future. Finally, the agency notes that promulgation of standards beyond the range proposed in the NPRM exceeds the scope of this rulemaking.

NADA recommended that the agency establish CAFE standards no higher than 20.2 mpg. This is the maximum feasible level in NADA's opinion, because of new regulatory constraints and the need to accommodate a wide range of consumer needs for utility and durability. NADA stated that NHTSA appears to have underestimated the potential impact of safety and emissions standards for MY 1992–94, although no specific data were provided.

NHTSA notes that, as discussed above, emissions impacts stemming from the pending Clean Air Act amendments are not anticipated until MY 1993 at the earliest. The agency also believes that its analysis has adequately accounted for the CAFE impacts of safety requirements affecting the MY 1992 fleet.

In its comments, Nissan projected that it would be in compliance with the upper end of the ranges proposed in the NPRM, and was thus not opposed to their adoption.

NHTSA has decided not to promulgate for MY 1992 the optional separate 2WD/4WD standards that have been promulgated for previous model years. A single combined standard is being issued instead. NHTSA is concerned that retaining the separate standards may actually decrease fuel economy by encouraging the production of the less fuel-efficient 4WD vehicles by full line manufacturers since these vehicles would not be averaged with 2WD trucks for compliance.

Separate 2WD and 4WD standards were originally intended to provide an alternative means of compliance to manufacturers that manufactured primarily 4WD vehicles that would reflect the specialized nature of their fleets without undue penalty. Since the separate standards were established, the manufacturers that were served by this system, American Motors and International Harvester, have, respectively, been acquired by Chrysler and stopped manufacturing light trucks. Thus, the original intended beneficiaries of the separate standards have disappeared.

The combined standard is a benefit to any manufacturer making predominantly 2WD models. It is a disadvantage to a manufacturer whose fleet consists entirely or mostly of 4WD vehicles. It is intended to take into account manufacturers that typically have a fleet with a majority of 2WD vehicles. NHTSA notes that there are only four manufacturers currently marketing fleets of predominantly 4WD vehicles. These are Daihatsu, Suzuki, Subaru and Range Rover. In MY 1990, Daihatsu, Suzuki and Subaru exceed by substantial margins the MY 1992 combined standard as well as the MY 1990 2WD standard by virtue of their fleets of small, fuel efficient models. Range Rover, on the other hand, does not meet the MY 1990 4WD standard because it markets only a single model, a 4WD utility vehicle with a fairly large engine. In contrast to the circumstances that existed in 1980, when American Motors and International Harvester had a combined share of just over 7 percent of the light truck market, Range Rover's projected share of the market for MY 1990 is much less than one percent. Range Rover's limited participation in the U.S. market does not warrant establishing separate 2WD and 4WD standards.

At present, most domestic and most import manufacturers choose to comply with the single, combined standard instead of the separate 2WD and 4WD standards.

Chrysler supported NHTSA's proposed decision to eliminate the separate 2WD and 4WD standards. Ford expressed no objection to the proposal, and NADA took no position on the issue. GM opposed the proposal on grounds that it would restrict full-line manufacturers flexibility in complying with the light truck standard. The company stated that the separate standards moderate the adverse CAFE impact of increased consumer demand for 4WD vehicles.

NHTSA does not agree that separate standards are necessary to provide full-line manufacturers with flexibility. As noted above, the original intention behind the separate standards was to enable specialized manufacturers to more easily comply with the standards. The separate standards no longer serve this purpose. The agency believes that it already properly accounts for the potential increasing relative demand for 4WD vehicles and the resulting CAFE

risks and potential mix effects when it sets the combined standard. Moreover, manufacturers are provided with flexibility in complying with the standard through the use of carryforward and carryback credits.

Based on these considerations, NHTSA has determined that the separate standards are no longer necessary. Accordingly, the MY 1992 standard contains only a combined standard for light trucks.

Manufacturers that have earned credits in past model years by complying with the separate 2WD and 4WD standards would still be able to use those credits to offset CAFE shortfalls within the three year carryforward period. *See,* 45 FR 83233 (December 18, 1980) and 44 FR 64943 (November 8, 1979).

In its March 1989 response to NHTSA's request for comments, Volkswagen suggested as an alternative to establishing a combined standard within its capability that the agency consider alternate special consideration for limited product line truck manufacturers. In establishing the MY 1980–81 light truck CAFE standards, the agency did establish a separate standard in light of International Harvester's (IH) limited product line. *See* 43 FR 11995, March 23, 1978. The agency noted that IH had unique problems given its limited sales volume, restricted product line, the fact that its engines were derivatives of medium duty truck (above 10,000 pounds GVWR) engines, and the fact that it did not have experience with state-of-the-art emission control technology which the other manufacturers had obtained in the passenger automobile market. The agency emphasized, however, that the separate class was being established for only two model years' duration, concluding that IH should be able to achieve levels of fuel efficiency in line with other manufacturers within that time period either through purchasing engines from outside sources or by making improvements to current engines. The agency does not believe that Volkswagen's situation is similar to that of IH. While IH's difficulties were related to being newly subject to the fuel economy program, Volkswagen's potential CAFE difficulties are not. Under the Cost Savings Act, manufacturers are required to meet average fuel economy standards which are set based on industrywide considerations. For MY 1992, Volkswagen is projected to be well above the CAFE standard. Thus, NHTSA believes it is not appropriate to set a separate standard to accommodate Volkswagen's limited product line status.

## VII. Impact Analyses

### *A. Economic Impacts*

The agency has considered the economic implications of the fuel economy standards established by this rule and determined that the rule is major within the meaning of Executive Order 12291 and significant within the meaning of the Department's regulatory procedures. The agency's detailed analysis of the economic effects is set forth in a Final Regulatory Impact Analysis (FRIA), copies of which are available from the Docket Section. The contents of that analysis are generally described above.

### *B. Environmental Impacts*

The agency has analyzed the environmental impacts of the MY 1992–94 light truck average fuel economy standards in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* On the basis of that analysis, we now conclude that this rulemaking will not have a significant effect upon the environment. Copies of the Environmental Assessment are available from the Docket Section. NHTSA is also developing a programmatic Environmental Impact Statement which will address the environmental impacts of the CAFE program. *See,* 54 FR 37702 (September 12, 1989).

### *C. Impacts on Small Entities*

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking would have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. No light truck manufacturer subject to the proposed rule would be classified as a "small business" under the Regulatory Flexibility Act. In the case of other small businesses, small organizations, and small governmental units which purchase light trucks, this rule will not affect the availability of fuel efficient light trucks or have a significant effect on the overall cost of purchasing and operating light trucks.

### *D. Impact on Federalism*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

### *E. Department of Energy Review*

In accordance with section 502(i) of the Cost Savings Act, the agency submitted this rule to the Department of Energy for review. The Department made no unaccommodated comments.

**List of Subjects in 49 CFR Part 533**

Energy conservation, Gasoline, Imports, Motor vehicles.

## PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR part 533 is amended as follows:

1. The authority citation for part 533 would continue to read as follows:

**Authority:** 49 U.S.C. 1657; 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. A new Table III is added in paragraph (a) in § 533.5 to read as follows:

**§ 533.5 Requirements.**

(a) * * *

TABLE III

| Model year | Combined standard | |
|---|---|---|
| | Captive imports | Others |
| 1992 | 20.2 | 20.2 |

3. Section 533.5(e) would be added to read as follows:

* * * * *

(e) For model year 1992, each manufacturer shall comply with the average fuel economy standard specified in paragraph (a) of this section (segregating captive import and other light trucks).

Issued on: March 30, 1990.

**Jerry Ralph Curry,**

*Administrator.*

[FR Doc. 90–7712 Filed 3–30–90; 1:56 pm]

BILLING CODE 4910–59–M

# Proposed Rules

Federal Register
Vol. 55, No. 65
Wednesday, April 4, 1990

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 985

[FV-90-140 PR]

### Expenses and Assessment Rate for Far West Spearmint Oil

**AGENCY:** Agricultural Marketing Service.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 985 for the 1990–91 marketing year established for the spearmint oil marketing order. Funds to administer this program are derived from assessments on handlers.

**DATES:** Comments must be received by April 16, 1990.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal, comments must be sent intriplicate to the Docket Clerk, F&W, AMS, USDA, P.O. Box 96456, room 2525, Washington DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn R. Schlatter, Marketing Specialist, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 9 handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order and approximately 253 producers of Far West spearmint oil in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of Far West spearmint oil producers and handlers may be classified as small entities.

The spearmint oil marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable spearmint oil handled from the beginning of such year. An annual budget of expenses is prepared by the Spearmint Oil Administrative Committee (Committee) and submitted to the U.S. Department of Agriculture for approval. The members of the Committee are handlers and producers of the regulated spearmint oil. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in its local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of spearmint oil. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have funds to pay their expenses.

The Committee met on February 28, 1990, and unanimously recommended 1990–91 marketing order expenditures of $187,400 and an assessment rate of $0.09 per pound of Far West spearmint oil. In comparison, 1989–90 marketing year budgeted expenditures were $176,800 and the assessment rate was $0.10 per pound. Expenditure categories in the 1990–91 budget are $75,400 for program administration, $86,000 for salaries, and $26,000 for expenses, which includes travel and compensation. Assessment income for 1990–91 is expected to total $163,820.61 based on shipments of 1,820,229 pounds of spearmint oil. Interest and incidental income is estimated at $8,500. The Committee may expend operational reserve funds of $15,079.39 to meet budgeted expenses. Additional reserve funds may be used to meet any deficit in assessment income. Further, any unexpended funds may be carried to the next marketing year as a reserve.

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

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Committee needs to have sufficient funds to pay its expenses,

which are incurred on a continuous basis.

**List of Subjects in 7 CFR Part 985**

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, it is proposed that a new § 985.310 be added as follows:

1. The authority citation for 7 CFR part 985 continues to read as follows:

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

2. New § 985.310 is proposed to be added as follows:

## PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

**§ 985.310 Expenses and assessment rate.**

Expenses of $187,400 by the Spearmint Oil Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with §985.41 is fixed at $0.09 per pound of salable spearmint oil for the 1990–91 marketing year ending May 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: March 29, 1990.

**William J. Doyle,**

*Associate Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90–7684 Filed 4–3–90; 8:45 am]

**BILLING CODE 3410–02–M**

## FEDERAL ELECTION COMMISSION

**[Notice 1990–3]**

**11 CFR Parts 106, 9003, 9007, 9033, 9035, and 9038**

### Presidential Primary and General Election Candidates: Technical Requirements for Computerized Magnetic Media

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission requests comments on proposed revisions to its regulations regarding the production of computerized information maintained or used by publicly-funded Presidential primary and general election campaign committees. The Commission also requests comments on a proposed document entitled "Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding" (CMMR) that would set forth technical standards designed to ensure the compatibility of magnetic media provided for Commission use during the mandatory audits of these publicly-funded campaign committees. The proposed CMMR is available on request from the Commission's Public Records Office. The Commission will issue a separate Notice of Proposed Rulemaking seeking comment on other possible revisions to the rules governing Presidential primary and general election candidates at a later date. Further information is provided in the supplementary information which follows.

**DATES:** Comments must be received on or before May 21, 1990.

**ADDRESSES:** Comments must be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, (202) 376–5690 or (800) 424–9530. The draft CMMR containing proposed technical standards is available from the Public Records Office.

**SUPPLEMENTARY INFORMATION:** The Commission is reviewing its regulations at 11 CFR 9003.1(b)(4) and 9033.1(b)(5) which govern the production of computerized magnetic tape by the authorized committees of Presidential primary and general election candidates. The current rules are intended to ensure that publicly-funded campaigns that maintain computerized information provide computer tapes containing this information to the Commission for use during the Commission's mandatory audit of these committees.

During the 1988 election cycle, the Commission encountered difficulty in obtaining computer tapes that were uniformly formatted, thereby necessitating considerable resources for reformatting. This has delayed the completion of certain audits and has entailed additional expense. The current primary and general election regulations covering the candidate agreements at 11 CFR 9003.1(b)(4) and 9033.1(b)(5) require the production of computer tapes if the committee has computerized its financial records. Given the amount of time and the costs involved in producing compatible computer tapes, the Commission would like to ensure that all committees affected understand exactly what types of computerized information must be produced, and understand that in the future it will be their obligation to provide these materials in a prescribed format, and that the costs of production will be borne by the audited committee, not the Commission.

The proposed rules would add new sections 9003.6 and 9033.12, which list examples of the types of computerized information that authorized committees would be required to supply if they maintain or use computerized information containing certain categories of data. A committee would be considered to use such information even if another person or entity maintains such information on the committee's behalf. The list has been drawn from the Commission's experience as to the types of data authorized committees have tended to maintain or use in the past. Comments are requested as to whether there may be other pertinent categories of data that should be included. Draft sections 9003.6 and 9033.12 would also require the production of technical manuals and other materials if needed to understand the computerized magnetic media (such as magnetic tapes and magnetic diskettes) provided. However, as in the past, the proposed rules would not require production of copyrighted computer software. Upon request, the authorized committee would also be expected to make available personnel familiar with the computerized information and the operation of the computer software.

The proposed rules would also indicate that the computerized magnetic media must meet certain technical specifications established by the Commission and must be provided at the cost of the authorized committees maintaining or using the computerized information. The Commission requests comments on proposed new technical standards contained in the draft CMMR, which is available upon request from the Commission's Public Records Office. These standards include general requirements for magnetic tape and magnetic diskettes, as well as file format specifications for records of receipts and disbursements, including contributors, vendors, invoices, bank account and check files. The technical standards eventually included in the final version of the CMMR may also be published as a supplement to the Commission's Guideline for Presentation in Good Order for primary candidates, and as a supplement to the Commission's Financial Control and Compliance Manual for general election candidates to ensure distribution to the committees affected by the technical specifications. Once the technical standards have been finalized, the Commission will encourage committees to provide samples of their magnetic tape or magnetic diskettes so that the Commission may determine whether the

samples comply with the specifications established.

Please note that the technical requirements are not intended to promote or discourage the use of any particular computer system or software. The Commission believes that committees should have as much discretion as possible in selecting the computer equipment they wish to use, determining what types of financial records and information should be computerized, and deciding how the computerized information is maintained. However, committees would be expected to present this financial information to the Commission in the format specified in the proposed CMMR.

The Commission also seeks comments on revising 11 CFR 9007.1(b)(1) and 9039.1(b)(1) to establish time frames for the production of these materials. The proposals indicate that the Commission generally will request computerized information prior to the commencement of audit fieldwork. The audited committee would be given 15 days to produce the materials requested. Once the Commission has obtained computerized magnetic media meeting the proposed technical specifications, the committee would be given at least two weeks notice of the start of audit fieldwork. This is intended to ensure adequate time for Commission staff to review the files in preparation for fieldwork. During or after fieldwork, additional materials may be requested. The proposed rules would allow 15 days for the production of the additional information. These time frames take into account the fact that the committee will know well in advance the technical specifications and format requirements it must meet to ensure compatibility. The Commission believes that production of computer information and materials prior to fieldwork may reduce the overall time needed to conduct fieldwork and complete the audit process.

Finally, the Commission seeks comments on possible revisions to 11 CFR 9003.3 and 9035.1 and a conforming amendment to 11 CFR 106.2(c) that indicate that the costs associated with producing the computerized information, other computer materials, and explaining the operation of the computer system's software may be treated as exempt compliance costs. Under proposed §§ 9003.6(b) and 9033.12(b), such costs would be borne solely by the committee to be audited. The current rules do not address the treatment of these costs. These costs would include the costs associated with converting data to meet the proposed technical requirements, providing formats/layouts, user guides, technical manuals and other information for processing and analyzing the computerized information provided, and making personnel familiar with the materials provided and the operation of the computer system's software available to answer questions from the Commission's staff. If committees select their computer systems with the Commission's technical standards in mind, the marginal cost of meeting these standards should be significantly less than the costs of converting their data from a format that was chosen without considering the prescribed technical standards.

The Commission will propose conforming amendments to the regulations regarding candidate agreements at 11 CFR 9003.1(b)(4) and 9033.1(b)(5) when the Commission issues a Notice of Proposed Rulemaking to address other aspects of the Presidential primary and general election regulations.

Please note that at present the rules governing presidential nominating conventions at 11 CFR part 9008 do not address the production of computerized magnetic media by convention committees or host committees. The Commission intends to include similar proposals in separate rulemaking regarding the convention regulations. Consequently, proposed language covering the nominating conventions is not included in the draft rules which follow.

The Commission welcomes comments on the technical specifications and the foregoing proposed amendments and additions to the Presidential primary and general election regulations and the issues raised in this Notice. No Final decision has been made by the Commission concerning any of the proposal contained in this Notice of the proposed technical standards in the CMMR.

**List of Subjects**

*11 CFR Part 106*

Campaign funds, Political candidates, Political committees and parties.

*11 CFR Part 9003*

Campaign funds, Elections, Political candidates.

*11 CFR Part 9007*

Administrative practice and procedure, Campaign funds, Political candidates.

*11 CFR Part 9033*

Campaign funds, Election, Political candidates.

*11 CFR Part 9035*

Campaign funds, Elections, Political candidates.

*11 CFR Part 9038*

Administrative practice and procedure, Campaign funds, Political candidates.

**Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]**

These proposed rules will not, if promulgated, have significant economic impact on a substantial number of small entities. The basis for the certification is that few, if any, small entities are affected by these proposed rules. Further, any small entities affected are already required to comply with the requirements of the Act in these areas.

For the reasons set out in the preamble, it is proposed to amend subchapters A, E and F, chapter I of title 11 of the *Code of Federal Regulations* as follows:

## PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

1. The authority citation for part 106 would be revised to read as follows:

**Authority:** 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

2. Section 106.2 would be amended by revising paragraph (c)(5)(i) to read as follows:

**§ 106.2 State allocation of expenditures incurred by authorized committees of Presidential primary candidates receiving matching funds.**

(c) * * *

(5) * * *

(i) Exempt compliance costs are those legal and accounting compliance costs incurred solely to ensure compliance with 26 U.S.C. 9031 *et seq.*, and 11 CFR chapter I, including the costs of preparing matching fund submissions, and the costs of producing, delivering and explaining computerized information and materials provided pursuant to 11 CFR 9033.12 and explaining the operation of the computer system's software. The costs of preparing matching fund submissions shall be limited to those functions not required for general contribution processing and shall include the costs associated with: Generating the matching funds submission list and the matching computer tape or other form of magnetic media for each submission,

edits of the contributor data base that are related to preparing a matching fund submission, making photocopies of contributor checks, and seeking additional documentation from contributors for matching purposes. The costs associated with general contribution processing shall include those normally performed for fundraising purposes, or for compliance with the recordkeeping and reporting requirements of 11 CFR Part 100 *et seq.*, such as data entry, batching contributions for deposit, and preparation of FEC reports.

* * * * *

## PART 9003—ELIGIBILITY FOR PAYMENTS

3. The authority citation for part 9003 would continue to read as follows:

**Authority:** 26 U.S.C. 9003 and 9009(b).

4. In § 9003.3, paragraph (a)(2)(i)(E) would be revised, paragraph (a)(2)(i)(F) would be redesignated as paragraph (a)(2)(i)(G), new paragraph (a)(2)(i)(F) would be added, paragraphs (a)(2) (iii) and (b) (6) would be revised, paragraph (c)(3)(iv) would be revised, and paragraph (c)(3)(v) would be added to read as follows:

**§ 9003.3 Allowable contributions.**

(a) * * *

(2) *Uses.*

(i) * * *

(E) To defray the cost of soliciting contributions to the legal and accounting compliance fund;

(F) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software; and

* * * * *

(iii) Amounts paid from this account for the purposes permitted by 11 CFR 9003.3(a)(2)(i)(A) through (F) shall not be subject to the expenditure limits of 2 U.S.C. 441a(b) and 11 CFR 110.8. (See also 11 CFR 100.8(b)(15).) When the proceeds of loans made in accordance with 11 CFR 9003.3(a)(2)(i)(G) are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

* * * * *

(b) * * *

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. Such costs include the cost of producing, delivering and explaining the computerized information and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70% of the costs (other than payroll) associated with computer services.

* * * * *

(c) * * *

(3) * * *

(iv) To defray the costs of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*;

(v) To defray the cost of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9003.6 and explaining the operation of the computer system's software.

* * * * *

5. Section 9003.6 would be added to read as follows:

**§ 9003.6 Production of computer information.**

(a) *Categories of computerized information to be provided.* If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (a)(1) through (a)(9) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9007.1(b)(1):

(1) Information required by law to be maintained regarding the committee's receipts or disbursements;

(2) Receipts by and disbursements from a legal and accounting compliance fund under 11 CFR 9003.3(a), including the allocation of payroll and overhead expenditures;

(3) Receipts and disbursements under 11 CFR 9003.3 (b) or (c) to defray the costs of soliciting contributions or to defray the costs of legal and accounting services, including the allocation of payroll and overhead expenditures;

(4) Records relating to the costs of producing broadcast communications and purchasing airtime;

(5) Records used to prepare statements of net outstanding qualified campaign expenses;

(6) Records used to reconcile bank statements;

(7) Disbursements made and reimbursements received for the cost of transportation, ground services and facilities made available to media personnel, including records relating to how costs charged to media personnel were determined;

(8) Records relating to the acquisition, use and disposition of capital assets or other assets; and

(9) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, bank reconciliations or statements of net outstanding qualified campaign expenses.

(b) *Organization of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized Magnetic Media Requirements for title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(c) *Additional materials and assistance.* Upon request, the committee shall produce documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information requested. Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

## PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

6. The authority citation for part 9007 continues to read as follows:

**Authority:** 26 U.S.C. 9007 and 9009(b).

7. Section 9007.1 would be amended by revising paragraph (b)(1) to read as follows:

**§ 9007.1 Audits.**

* * * * *

(b) *Conduct of fieldwork.*

(1) If the candidate or the candidate's authorized committee does not maintain or use any computerized information containing the data listed in 11 CFR

9003.6, the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the data listed in 11 CFR 9003.6, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. Upon receipt of the computerized information requested and compliance with the technical specifications of 11 CFR 9003.6(b), the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided, and which may be used for purposes including, but not limited to, updating a statement of net outstanding qualified campaign expenses. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the Committee that is of assistance in the Commission's audit. The committee shall produce the additonal or updated computerized information no later than 15 calendar days after service of the Commission's request.

* * * * *

## PART 9033—ELIGIBILITY FOR PAYMENTS

8. The authority citation for Part 9033 would continue to read as follows:

Authority: 26 U.S.C. 9033 and 9039(b).

9. New section 9033.12 would be added to read as follows:

### § 9033.12 Production of computerized information.

(a) *Categories of computerized information to be provided.* If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (a)(1) through (a)(9) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9038.1(b)(1):

(1) Information required by law to be maintained regarding the committee's receipts or disbursements;

(2) Records of allocations of expenditures to particular state expenditure limits and to the overall expenditure limit;

(3) Disbursements for exempt fundraising and exempt compliance costs, including the allocation of salaries and overhead expenditures;

(4) Records of allocations of expenditures for the purchase of broadcast media;

(5) Records used to prepare statements of net outstanding campaign obligations;

(6) Records used to reconcile bank statements;

(7) Disbursements made and reimbursements received for the cost of transportation, ground services and facilities made available to media personnel, including records relating to how costs charged to media personnel were determined;

(8) Records relating to the acquisition, use and disposition of capital assets or other assets; and

(9) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, bank reconciliations or statements of net outstanding campaign obligations.

(b) *Organization of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized Magnetic Media Requirements for title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(c) *Additional materials and assistance.* Upon request, the committee shall produce documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and other materials for processing and analyzing the information requested. Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

## PART 9035—EXPENDITURE LIMITATIONS

10. The authority citation for part 9035 would continue to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

11. Section 9035.1 would be amended by revising paragraph (c)(1) to read as follows:

### § 9035.1 Campaign expenditure limitation.

* * * * *

(c) * * *

(1) Exempt compliance costs are those legal and accounting compliance costs incurred solely to ensure compliance with 26 U.S.C. 9031 *et seq.*, 2 U.S.C. 431 *et seq.*, and 11 CFR chapter I, including the costs of preparing matching fund submissions, and the costs of producing delivering and explaining computerized information and materials provided pursuant to 11 CFR 9033.12 and explaining the operation of the computer system's software. The costs of preparing matching fund submissions shall be limited to those functions not required for general contribution processing and shall include the costs associated with: Generating the matching funds submission list and the matching fund computer tape or other form of magnetic media for each submission, edits of the contributor data base that are related to preparing a matching fund submission, making photocopies of contributor checks, and seeking additional documentation from contributors for matching purposes. The costs associated with general contribution processing shall include those normally performed for fundraising purposes, or for compliance with the recordkeeping and reporting requirements of 11 CFR part 100 *et seq.*, such as data entry, batching contributions for deposit, and preparation of FEC reports.

* * * * *

## PART 9038—EXAMINATIONS AND AUDITS

12. The authority citation for part 9038 would continue to read as follows:

Authority: 26 U.S.C. 9038 and 9039(b).

13. Section 9038.1 would be amended

by revising paragraph (b)(1) introductory text to read as follows:

**§ 9038.1 Audit.**

* * * * *

(b) *Conduct of fieldwork.*

(1) If the candidate or the candidate's authorized committee does not maintain or use any computerized information containing the data listed in 11 CFR 9033.12, the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. If the candidate or the candidate's authorized committee maintains or uses computerized information containing any of the data listed in 11 CFR 9033.12, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. Upon receipt of the computerized information requested and compliance with the technical specifications of 11 CFR 9033.12(b), the Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided, and which may be used for purposes including, but not limited to, updating a statement of net outstanding campaign obligations, or updating the amount chargeable to a state expenditure limit. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the committee and that is of assistance in the Commission's audit. The committee shall produce the additional or updated computerized information no later than 15 calendar days after service of the Commission's request.

* * * * *

Lee Ann Elliott,

*Chairman, Federal Election Commission.*

Dated: March 29, 1990.

[FR Doc. 90-7710 Filed 4-3-90; 8:45 am]

BILLING CODE 6715-01-M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 90-NM-35-AD]**

## Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-10 series airplanes, which would require installation of a main deck cargo door "vent door-open" indicating system and installation of cargo door hinge pin retainers. This proposal is prompted by a review of all Model DC-10 cargo doors following a recent accident involving a Model DC-9 series airplanes in which the main deck cargo door inadevertently opened during takeoff or shortly thereafter. This condition, if not corrected, could result in loss of pressurization and reduced controllability of the airplane.

**DATES:** Comments must be received no later than May 29, 1990.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-35-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3885 Lakewood Boulevard, Long Beach, California 90846, Attention: Manager, Technical Publication Operation C1-L71 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dorenda Baker, Aeorspace Engineer, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, Airframe Branch (ANM-120L), 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5231.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-35-AD." The post card will be date/time stamped and returned to the commenter.

### Discussion

A recent accident involving a Model DC-9 series airplane occurred in which the main deck cargo door inadvertently opened during takeoff or shortly thereafter. This prompted the FAA to review the Model DC-10 cargo doors, since the design is similar to that of the Model DC-9. The FAA reviewed the Model DC-10 series airplane cargo doors, including the cargo door design, maintenance of the door, and all service information. Based on this review, the FAA has determined that mandatory corrective actions are necessary to ensure that the Model DC-10 cargo doors will be properly closed, latched, and locked prior to takeoff and will not inadvertently open in flight.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 52-129, dated July 23, 1975, which describes the installation of hinge pin retainers on all outward opening cargo doors to ensure that the hinge pin will be retained in the event of a failure of the hinge pin.

In addition McDonnell Douglas is currently preparing a service bulletin describing procedures to install a main deck cargo door "vent door-open" indicating circuit that will alert the flight crew when the vent door is not properly closed and latched. The circuit will be part of the main cargo door-open indicating system. (AD 77-12-04,

Amendment 39–2911, requires that all Model DC–10 series airplanes with an active main deck cargo door must have a vent door.)

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require installation of hinge pin retainers on all outward opening cargo doors in accordance with the service bulletin previously described, and installation of a main deck cargo door "vent door-open" indicating system that is approved by the FAA.

There are approximately 200 Model DC–10 series airplanes of the affected design in the worldwide fleet. It is estimated that 120 airplanes of U.S. registry would be affected by the requirement to install hinge pin retainers. This installation would take approximately 30 manhours per airplane to accomplish, at an average labor cost of $40 per manhour. The cost of required parts is estimated to be $476 per airplane. Based on these figures, the total cost impact of this installation of U.S. operators is estimated to be $201,120.

Approximately 26 airplanes of U.S. registry would be affected by the requirement to install a "vent door-open" indicating system. This installation would take approximately 15 manhours per airplane to accomplish the required actions, and the average labor cost would be $40 per manhour. the cost of required parts is estimated to be $1,400 per airplane. Based on these figures, the total cost impact on this installation on U.S. operators is estimated to be $52,000.

Based on the figures explained above, the total cost impact of this proposed AD on U.S. operators is estimated to be $253,120.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

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

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

**§ 39.13 [amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Applies to all Model DC–10 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent opening of a cargo door in flight, accomplish the following:

A. Within one year after the effective date of this amendment, accomplish the following:

1. Install a vent door-open indicating system on the main deck cargo door equipped with a vent door, which is approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, that will signal the appropriate flight crew member when the main cargo door vent door is not fully closed and latched; and

2. Install hinge pin retainers on each end of all cargo door hinges, in accordance with McDonnell Douglas Service Bulletin 52–129, Revision 1, dated July 23, 1975.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, Attention Manager, Technical Publication Operation C1–L71 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street Long Beach, California.

Issued in Seattle, Washington, on March 26, 1990.

**Steven B. Wallace,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90–7699 Filed 4–3–90; 8:45 am]

BILLING CODE 4910–13–M

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**DEPARTMENT OF COMMERCE**

**Technology Administration**

**15 CFR Part 295**

**[Docket No. 900130–0030]**

**RIN 0693–AA83**

## Advance Technology Program

**AGENCY:** Technology Administration, Commerce.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Under Secretary for Technology requests comments on proposed implementation of the Advanced Technology Program, and specifically on the draft regulations to appear at 15 CFR part 295 implementing the Program which are included in this notice. The Advanced Technology Progam was authorized by section 5131 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418) codified at 15 U.S.C. 278n.

**DATES:** Comments on the proposed program must be received no later than May 4, 1990.

**ADDRESSES:** Comments on the proposed program must be submitted in writing to: Advanced Technology Program Rule Comments, Technology Administration, U.S. Department of Commerce, room B110 Technology, Gaithersburg, MD 20899.

**FOR FURTHER INFORMATION CONTACT:** To receive additional program information, contact George A. Uriano at (301) 975–5187. For additional information on intellectual property, licensing, and royalty payment provisions, contact Michael R. Rubin at (301) 975–2803.

**SUPPLEMENTARY INFORMATION:**

**Program Description**

The Under Secretary for Technology, pursuant to the authority delegated to him by Section 2.02 of Department Organization Order 10–17, dated January 6, 1989, requests comments regarding the Advanced Technology Program. The Advanced Technology Program will assist United States businesses to carry out research and development on pre-competitive generic technologies. The program will focus on improving the competitive position of the United States and its businesses by accelerating the early to mid-stage development of per-competitive generic technologies that have significant potential to accelerate economic growth, and raise productivity. The 1988 Act granted new legislative authority to the Secretary including support for the private sector for the purposes stated above. The authority is to be used to (1) aid United States joint research and development ventures; (2) enter into contracts and cooperative agreements with United States businesses, especially small businesses, and independent research organizations; (3) involve the Federal laboratories in the Program, where appropriate, using among other authorities the cooperative research and development agreements provided for under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980; and (4) carry out, in a manner consistent with the provisions of the law, such other cooperative research activities with joint ventures as may be authorized by law or assigned to the Program by the Secretary. Assistance under this program will emphasize research in areas where the National Institute for Standards and Technology (NIST) has scientific or technological expertise.

Such authority permits the Advanced Technology Program to support a broad range of activities including scientific experiments, experimental production and testing of models, prototypes, equipment, materials, and processes as well as planning for such activities. The Advanced Technology Program intends to place a major emphasis on coordinating its program with other technology development programs. Major emphasis will be placed on establishing and maintaining strong program and operational ties to important technology sources (e.g. universities and other Federal agencies), technology users (businesses) and economic development authorities (State and local governments).

The Technology Administration intends to focus on supporting private sector development of pre-competitive generic technologies and to participate in a variety of industry initiatives. However, the program will avoid participation in development of specific products and processes by the private sector.

A general definition of the terms "generic technology" and "pre-competitive technology" are embodied in § 295.2 of the proposed rule, as follows:

*Generic technology* means a concept, component, or process, or the further investigation of scientific phenomena, that has the potential to be applied to a broad range of products or processes across many industries. A generic technology may require subsequent research and development for commercial application.

*Pre-competitive technology* means research and development activities up to the stage where technical uncertainties are sufficiently identified to permit assessment of commercial potential and prior to development of application-specific commercial prototypes. At the stage of pre-competitive research and development, for example, results can be shared within a consortium that can include potential competitors without reducing the incentives for individual firms to develop and market commercial products and processes based upon the results.

Section 295.5 of the proposed rule acknowledges that, under the law, the Federal Government is entitled to a share of licensing fees and royalty payments. In the event that the Technology Administration elects to exercise this entitlement, it would negotiate the terms and conditions of such payments prior to any award.

The Technology Administration will seek to augment its efforts under ATP by encouraging other Federal agencies and State and local governments to cooperate wherever feasible with ATP funding recipients. However, the ATP will not directly provide funding to any other governmental entity or directly to academic institutions.

Awards will be made on the basis of the following selection criteria:

1. Scientific and Technical Merit of the Proposal.
2. Commercial Benefits of the Proposal.
3. Technology Transfer Benefits of the Proposal.
4. Experience and Qualifications of the Proposing Organization.
5. Proposer's Level of Commitment and Organizational Structure.

Detailed descriptions of these five criteria and the criteria to be used for selection of planning grant recipients are contained in § 295.3.

More extensive descriptions of specific areas of technology sought, funding available, estimated number of awards, award amount limitations, priorities, and any requirements, will be published separately at the time of solicitation.

**Request for Comments**

The Under Secretary for Technology requests comments on the draft regulations to appear at 15 CFR part 295 implementing the Advanced Technology Program which are included in this notice.

In developing comments on the proposed rule, particular attention should be paid to the (1) definitions of the terms "pre-competitive technology" and "generic technology" embodied in § 295.2, (2) criteria for selection of recipients of funding for technology development grants and planning grants embodied in § 295.3, and (3) adequacy of provisions governing intellectual property rights, licensing fees, and royalty payments embodied in §295.5.

Persons interested in commenting on the proposed program should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying in the Commerce Department's Central Reference and Records Inspection Facility, Herbert Hoover Building, room 6628, 14th Street between E Street and Constitution Avenue NW., Washington DC 20230.

**Classification**

This document is not a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not have an annual impact on the economy of $100 million or more, nor will it result in a major increase in costs or prices for any group, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule will not have a significant economic effect on a substantial number of small entities requiring a flexibility analysis under the Regulatory Flexibility Act. This is because the program is entirely voluntary for the participants that seek funding. It is not a major federal action requiring an environmental assessment

under the National Environment Policy Act. This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act. Comments on the proposed information requirements should be submitted to the OMB Desk Officer, room 3228, Office of Management and Budget, Washington, DC 20503. The Advanced Technology Program does not involve the mandatory payment of any matching funds from a state or local government, and does not affect directly any state or local government. Accordingly, the Technology Administration has determined that Executive Order 12372 is not applicable to this program. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. The Advanced Technology Program is being carried out under the authority of section 5131 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418).

Dated: March 29, 1990.

**Lee W. Mercer,**

*Deputy Under Secretary, Technology Administration.*

For reasons set forth in the preamble, it is proposed that title 15 of the Code of Federal Regulations be amended by adding part 295 to read as follows:

## PART 295—ADVANCED TECHNOLOGY PROGRAM

### Subpart A—General

Sec.

295.1 Purpose.
295.2 Definitions.
295.3 Criteria for selection.
295.4 Notice of availability of funds.
295.5 Intellectual property rights; licensing fees and royalty payments.
295.6 Protection of confidential information.
295.7 Unspent balances of Federal funds.
295.8 Coordination/Cooperation with other Federal Agencies.
295.9 Special financial reporting requirements.
295.10 NIST technical assistance to recipients of awards.

### Subpart B—Assistance to U.S. Joint Research and Development Ventures

295.20 Types of assistance available.
295.21 Qualification of applicants.
295.22 Limitations on assistance.
295.23 Dissolution of Joint Research and Development Ventures.
295.24 Registration.

### Subpart C—Assistance to U.S. Business

295.30 Types of assistance available.
295.31 Qualification of applicants.
295.32 Limitations on assistance.

**Authority:** 15 U.S.C. 271 et seq., and sec. 5131 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418).

### Subpart A—General

#### § 295.1 Purpose.

(a) The purpose of the Advanced Technology Program is to assist United States businesses to carry out research and development on pre-competitive generic technologies. These technologies are:

(1) Enabling, in that they offer wide breadth of potential application and form an important technical basis for future product-specific applications; and

(2) High value, in that when applied, they offer significant benefits to the economy.

(b) In the case of joint research and development ventures involving potential competitors funded under the Program, the willingness of firms to commit significant amounts of corporate funds to the venture will be taken as an indication that the proposed research and development is pre-competitive. For joint ventures that invovle firms and their customers or suppliers or for single firms not proposing cooperative research and development, their willingness to adequately address technology transfer requirements to assure prompt and widespread use and protection of results by participants and, as appropriate, other U.S. businesses may characterize their research and development as pre-competitive.

(c) Assistance under this program will emphasize research in areas where the National Institute for Standards and Technology (NIST) has scientific or technological expertise.

(d) These rules prescribe policies and procedures for the award of grants and cooperative agreements under the Advanced Technology Program, in order to ensure the fair, equitable and uniform treatment of all proposals for assistance under this Program. While the Advanced Technology Program is authorized to enter into contracts to carry out its mission, these rules address only the award of grants and cooperative agreements.

#### § 295.2 Definitions.

(a) The term *award* includes grants and cooperative agreements.

(b) The term *generic technology* means a concept, component, or process, or the further investigation of scientific phenomena, that has the potential to be applied to a broad range of products or processes across many industries. A generic technology may require subsequent research and development for commercial application.

(c)(1) The term *joint research and development venture* or *joint venture* means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of:

(i) Theoretical analysis, experimentation, or systematic study of phenomena or observable facts;

(ii) The development or testing of basic engineering techniques;

(iii) The extension of investigative findings or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes;

(iv) The collection, exchange, and analysis of research information; or

(v) Any combination of the purposes specified in paragraphs (c)(1) (i), (ii), (iii), and (iv) of this section, and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture, but does not include any activity specified in paragraph (c)(2) of this section.

For the purposes of this document, the terms *consortia* and *partnerships* are considered to be joint ventures.

(2) The term *joint research and development venture* excludes the following activities involving two or more persons:

(i) Exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required to conduct the research and development that is the purpose of such venture;

(ii) Entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production or marketing by any person who is a party to such joint venture of any product, process, or service, other than the production or marketing of proprietary information developed through such venture, such as patents and trade secrets; and

(iii) Entering into any agreement or engaging in any other conduct

(A) To restrict or require the sale, licensing, or sharing of inventions or developments not developed through such venture, or

(B) To restrict or require participation by such party in other research and development activities, that is not reasonably required to prevent

misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture.

(d) The term *person* shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(e) The term *pre-competitive technology* means research and development activities up to the stage where technical uncertainties are sufficiently identified to permit assessment of commercial potential and prior to development of application-specific commercial prototypes. At the stage of pre-competitive research and development, for example, results can be shared within a consortium that can include potential competitors without reducing the incentives for individual firms to develop and market commercial products and processes based upon the results.

(f) The program *Program* means the Advanced Technology Program.

(g) The term *Secretary* means the Secretary of Commerce or his designee.

**§ 295.3 Criteria for selection.**

(a) Except as provided in § 295.3(b), the evaluation criteria to be used in selecting any proposal for funding under this program, and their respective weights, are:

(1) *Scientific and Technical Merit of the Proposal* (30 percent). (i) Quality and innovativeness of the proposed technical program (i.e. uniqueness with respect to current industry practice).

(ii) Technical feasibility of the project (i.e. are the technical objectives realistic?).

(iii) Coherency of technical plan and clarity of vision of technical objectives.

(iv) Adequacy of systems-integration and multi-disciplinary planning including integration of appropriate downstream or upstream production, manufacturing, quality assurance, and customer service requirements.

(2) *Commercial Benefits of the Proposal (15 percent).* (i) Potential broad impact on U.S. technology and knowledge base.

(ii) Potential to improve the U.S. economic growth and the productivity of a broad spectrum of industrial sectors or businesses within an econmically important single sector.

(iii) Timeliness of proposal (i.e. the project results will not occur too late to be competitively useful in the marketplace).

(3) *Technology Transfer Benefits of the Proposal (15 percent).* (i) Evidence that if the project is successful, the participants will pursue further development of the technology toward commercial application.

(ii) Project plan adequately addresses technology transfer requirements to assure prompt and widespread use and protection of results by participants and, as appropriate, other U.S. businesses.

(4) *Experience and Qualifications of the Proposing Organization (20 percent).* (i) Adequacy of proposer's staffing, facilities, equipment, and other resources to accomplish the proposed program objectives.

(ii) Quality and appropriateness of the full-time technical staff to carry out the proposed work program and to identify and overcome technical barriers to meeting project objectives.

(iii) For proposals involving laboratory prototype development, evidence of availability of adequate design and manufacturing tools appropriate to the prototype.

(5) *Proposer's Level of Commitment and Organizational Structure (20 percent).* (i) Level of commitment of proposer as demonstrated by contribution of personnel, equipment, facilities, and funding.

(ii) For joint ventures, appropriateness of the structure of the proposed venture organization in terms of composition of participants (i.e. vertical and/or horizontal integration).

(iii) For joint ventures, appropriate participation by small businesses.

(iv) Evidence of a strong commitment by proposer to complete and, if appropriate, provide support for continuation of the program beyond the period of federal funding.

Each of the subcriteria within a category shall be weighted equally. However, no project will be funded in the absence of a finding of scientific and technical merit by the reviewers.

(b) The Secretary may award planning grants to any applicant:

(1) Responding to a request for proposals for planning grants issued pursuant to § 295.4; or

(2) Responding to a general request for proposals issued pursuant to § 295.4 if the full proposal is not selected for funding by the Program.

Planning grants will only be available for any proposed research project that has been subject to a merit review, and has, in the opinion of the reviewers and the Secretary been shown to have scientific and technical merit. Planning grants will be evaluated according to the following criteria and weights:

(1) Technical innovativeness, feasibility, and timeliness of the proposed program to be developed through the planning grant. (30 percent)

(2) Potential commercial benefits of the proposed program in terms of its broad impact on U.S. economic growth and technology base. (20 percent)

(3) Experience and qualifications of the personnel and organization responsible for developing the plan. (20 percent)

(4) Level of commitment of the organization responsible for developing the plan as demonstrated by contribution of necessary resources including funding to develop the plan. (20 percent)

(5) Quality of the planning process as determined by the coherency and clarity of the planning process objectives and approach. (10 percent)

(c) The selection process for awards under the Program will be a two step process. The first step will be a review to determine whether particular applications have *scientific and technical merit* (criteria #1). In the second step, selections from among those applications deemed to possess such merit will be based upon (1) the rank order of the applications on the basis of all selection criteria, and (2) the availability of funds.

**§ 295.4 Notice of availability of funds.**

(a) The Secretary shall periodically publish a notice in the **Federal Register** inviting interested parties to submit proposals for funding under the Program. Applications will be considered for funding only when submitted in a timely manner in response to a specific notice in the **Federal Register** inviting applications for funding.

(b) All notices published in the **Federal Register** in accord with § 295.4(a) of these procedures shall include basic information about the amount of funds available, the approximate number of awards, types of awards including planning grants if available, closing dates, the name, address and telephone number of the contract person, a requirement that proposals be submitted with a Standard Form 424, and any other appropriate guidance.

(c) Notices under § 295.4(a) shall also state that awards under the Program shall be subject to all Federal and Departmental regulations, policies and procedures applicable to financial assistance awards, and shall require that funds awarded by the Program shall be used only for direct costs and not for indirect costs, profits, or management fees of the funding recipients. Notices shall also include the notification that section 319 of Public Law 101–121 generally prohibits recipients of Federal

contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), will be required to be submitted with the application. Also, notices shall inform applicants that they are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26, and in accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

**§ 295.5 Intellectual property rights; licensing fees and royalty payments.**

(a) In establishing its intellectual property rights policies, the Program seeks to create a balance between the societal good that will result from the prompt and wide-spread application of technologies developed with Program funds, and the need to provide economic incentives for individual firms to utilize those technologies. In general, the Program will encourage the publication of research results by funding recipients in a timely fashion, while preserving the right of the recipient to obtain patents, copyrights, and other appropriate forms of intellectual property protection. While the Government will retain licenses for governmental purposes for all patents and copyrights developed under Program funding, § 295.6(b) prevents the Government from releasing to the public unpublished intellectual property developed by a funding recipient with Program funds without first obtaining the agreement of the recipient.

(b) Awards under the Program will follow the policies and procedures on ownership to inventions made under grants and cooperative agreements that are set out in Public Law 96–517 (35 U.S.C. chapter 18), the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies dated February 18, 1983, and part 401 of title 37 of the Code of Federal Regulations, as appropriate. These policies and procedures generally require the Government to grant to funding recipients the right to elect to obtain title to any invention made in the course of the conduct of research under an award, subject to the reservation of a Government license, if the purpose of the award is the conduct of experimental, developmental or research work. Exceptions to this rule will only be made (1) when the funding recipient is not located in the United States or does not have a place of business in the United States or is subject to the control of a foreign government; or (2) in exceptional circumstances when the Secretary determines that restriction or elimination of the right to obtain title to any subject invention will better promote the commercialization of the invention by United States industry and labor.

(c) Except as otherwise specifically provided for in an Award, funding recipients under the Program may establish claim to copyright subsisting in any data first produced in the performance of the award. When claim is made to copyright, the funding recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government, are published, or are deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(d) For technologies resulting from an award under this program, the Federal Government shall be entitled to a share of the licensing fees and royalty payments made to and retained by a business or joint research and development venture receiving funds under these procedures in an amount proportional to the Federal share of the costs incurred by the business or joint venture as determined by independent audit.

**§ 295.6 Protection of confidential information.**

(a) As required by § 278n(d)(5) of title 15 of the United States Code, the following information obtained by the Secretary on a confidential basis in connection with the activities of any business or joint research and development venture receiving funding under the program shall be exempt from disclosure under the Freedom of Information Act—

(1) Information on the business operation of any member of the business or joint venture;

(2) Trade secrets possessed by any business or any member of the joint venture.

(b) Unpublished intellectual property owned and developed by any business or joint research and development venture receiving funding or by any member of such a joint venture may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program. The licenses granted to the Government under § 295.5(c) shall not be considered a waiver of this requirement.

**§ 295.7 Unspent balances of Federal funds.**

If a business or joint research and development venture receiving funds under these procedures fails before the completion of the period for which an award has been made, after all allowable costs have been paid and appropriate audits conducted, the upspent balance of the Federal funds shall be returned by the recipient to the Program.

**§ 295.8 Coordination/cooperation with other Federal agencies.**

So as to avoid any unnecessary duplication of effort and to increase the possibilities of joint funding of projects of common interest with other agencies, the Secretary intends to coordinate with other agencies as appropriate, but particularly where the Secretary determines that the subject is of substantial interest to another agency.

**§295.9 Special financial reporting requirements.**

Each award under the Program shall contain procedures regarding financial reporting and auditing to ensure that awards are used for the purposes specified in these procedures, are in accordance with sound accounting practices, and are not funding existing or planned research programs that would be conducted in the same time period in the absence of financial assistance under the program.

**§295.10 NIST technical assistance to recipients of awards.**

(a) Under the Federal Technology Transfer Act of 1986, the National Institute of Standards and Technology of the Technology Administration has

the authority to enter into cooperative research and development agreements with non-Federal parties to provide personnel, services, facilities, equipment, or other resources except funds toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory. In turn, the National Institute for Standards and Technology has the authority to accept funds, pesonnel, services, facilities equipment and other resources from the non-Federal party or parties for the joint research effort. Cooperative research and development agreements do not include procurement contracts or cooperative agreements as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code.

(b) In no event will the National Institute of Standards and Technology enter into a cooperative research and development agreement with a recipient of awards under the Program which provides for the payment of Program funds from the award recipient to the National Institute of Standards and Technology.

## Subpart B—Assistance to U.S. Joint Research and Development Ventures

### §295.20 Types of assistance available.

This subpart describes the types of assistance that may be provided under the authority of 15 U.S.C. 278n(b)(1). Such assistance includes but is not limited to:

(a) Partial start-up funding for joint research and development ventures.

(b) A minority share of the cost of joint research and development ventures for up to five years.

(c) Equipment, facilities and personnel for joint research and development ventures.

Emphasis will be placed on areas where the National Institute for Standards and Technology has scientific or technical expertise, on solving generic problems of specific industries, and on making those industries more competitive in world markets.

### §295.21 Qualification of applicants.

Assistance under this subpart will be available to United States joint research and development ventures, including those which have as members universities, independent research organizations, and governmental entities. However, the Program will not provide funding directly to any governmental entity.

### §295.22 Limitations on assistance.

No awards are to be made unless, in the judgement of the Secretary, Federal aid is needed if the industry in question is to form a joint venture quickly.

### §295.23 Dissolution of joint research and development ventures.

Upon dissolution of any joint research and development venture receiving funds under these procedures or at a time otherwise agreed upon, the Federal Government shall be entitled to a share of the residual assets of the joint venture proportional to the Federal share of the costs of the joint venture as determined by independent audit.

### §295.24 Registration.

Joint research and development ventures must provide notification to the Department of Justice or to the Federal Trade Commission under the National Cooperative Research Act of 1984 prior to award.

## Subpart C—Assistance to U.S. Businesses

### §295.30 Types of assistance available.

This subpart describes the types of assistance that may be provided under the authority of 15 U.S.C. 278n(b)(2). Such assistance includes but is not limited to entering into cooperative agreements with United States businesses, especially small businesses, and with independent research organizations, provided that emphasis is placed on applying NIST's research, research techniques and expertise to those organizations' research programs.

### §295.31 Qualification of applicants.

Awards under this subpart will be available to all United States businesses and independent research organizations. However, the Program will not directly provide funding to any governmental entity or academic institution.

### §295.32 Limitations on assistance.

Awards under this subpart may not exceed $2,000,000, or be for more than three years, unless the Secretary provides a written explanation to the authorizing committees of both Houses of Congress and then, only after thirty days during which both Houses of Congress are in session.

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 23 CFR Part 1327

[Docket No. 84-02; Notice 6]

RIN 2127-AD26

## Procedures for Participating in and Receiving Data From the National Driver Register Problem Driver Pointer System

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** For over 25 years, the Federal Government has operated the National Driver Register (NDR), a voluntary State/Federal cooperative program to assist the States in exchanging information regarding certain driving records. The NDR is designed to address the problem that arises when chronic traffic law violators, after losing their licenses in one State, travel to and receive licenses in another State. In 1982, Congress enacted legislation to improve the NDR by converting it to the Problem Driver Pointer System (PDPS), a fully automated system, which would enable a State to determine, virtually instantly, whether another State has taken an adverse action against a driver license applicant. This Notice of Proposed Rulemaking proposes the procedures that each State must follow to notify the agency of its intention to participate in the PDPS, the conditions of State participation, and the procedures and conditions under which other authorized parties may receive NDR information through participating States. The agency requests comments on the proposed regulation discussed in this notice. All comments must be limited to 15 pages in length. Necessary attachments may be appended without regard to the 15 page limit. (49 CFR 553.21.)

This notice also announces that the Secretary has determined that the NDR is operational.

**DATES:** Comments must be received by May 21, 1990.

**ADDRESSES:** Written comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to: Docket Section, National Highway Traffic Safety Administration, room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4 p.m.)

**FOR FURTHER INFORMATION CONTACT:** Mr. Clayton E. Hatch, Chief, National Driver Register (NTS–24), 400 Seventh Street SW., Washington, DC 20590 or telephone (202) 366–4800.

**SUPPLEMENTARY INFORMATION:** The National Driver Register Act of 1982 (Pub. L. 97–364) called for the establishment of an improved National Driver Register (NDR) to assist chief driver licensing officials of participating States in exchanging information regarding the motor vehicle driving records of individuals. The 1982 Act provides that the new NDR or the Problem Driver Pointer System (PDPS) will no longer contain actual adverse action information. Rather, it will contain only identifying information (pointer records) to enable the NDR to identify a problem driver and to retrieve the adverse information on that driver from the State of record and relay it to the State of inquiry. This, the NDR would no longer be encumbered with high volume data handling problems, and could rely directly on the State to provide information which would be as accurate and as current as the data in the State file at the time of inquiry. This system would also solve concerns about the privacy implications of the Federal Government retaining detailed records on certain drivers. In addition, the PDPS must be designed so that information can be received, referred and relayed electronically. To evaluate these and other PDPS features, Congress mandated, in section 207 of the Act, that NHTSA pilot test the new system for one year prior to full implementation and report the results to Congress.

On July 11, 1985, NHTSA published a final rule in the **Federal Register** (50 FR 28191) on the procedures for transition from the old NDR to the new NDR. The notice described in detail the old NDR system, the new system that was being developed to improve the NDR, and the pilot test program that was to be conducted. It also established the procedures for transition to the new NDR system.

The one year pilot test program of the NDR PDPS system was completed on July 31, 1988, and a report presenting the results of this program as well as recommendations for continuation of the PDPS was forwarded to Congress in March 1989. In this document, the agency reported to Congress that the PDPS meets all the requirements for timeliness, reliability and capacity; that it is effective in assisting State driver licensing officials in identifying and denying licenses to problem drivers when they apply for licenses; and that it is cost effective. Based on these findings, NHTSA expects and hopes that all States will want to participate in the new Problem Driver Pointer System.

On October 27, 1986, the President signed into law the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570), or the CMVSA. This Act provides that each operator of a commercial motor vehicle, as described therein, must possess a single commercial driver's license, and that "before issuing a commercial driver's license to operate a commercial motor vehicle to any person, the State shall request the Secretary for information from the National Driver Register established pursuant to the NDR Act of 1982 (23 U.S.C. 401 note) (after such Register is determined by the Secretary to be operational)." Section 12009(a)(20) of the CMVSA. Now that the pilot program (under which NDR operations were tested) has been completed, the Secretary has determined that the NDR is operational. The agency therefore proposes, in this notice, the procedures which will permit all States to participate in the NDR under the NDR Act of 1982.

Section 204(a) of the 1982 legislation provides that any State may participate in the PDPS (or become a participating State) by notifying the Secretary of it intention to be bound by the provisions of section 205 of the Act. Under section 204(b), and participating State may stop participating by notifying the Secretary of its withdrawal from participation in the Register system. Finally, the Act directs, in section 204(c), that any notification made by a State of its intention to participate or of its withdrawal from participation shall be made in such form, and according to such procedures, as the Secretary shall establish by regulation. This notice proposes these notification procedures. It also proposes the conditions of State participation and the procedures and conditions under which other authorized parties (identified below) may receive NDR information through a participating State.

## PDPS Operations

The manner in which the Problem Driver Pointer System (PDPS) would operate, as stated above, was mandated by Congress in the NDR Act of 1982 and discussed in detail in the 1985 final rule (50 FR 28191) during the system's development. The agency conducted a one-year pilot test program of this system in accordance with the statute and, in March 1989, reported the results of the program to Congress. The report's availability was announced in the **Federal Register** on July 19, 1989 (54 FR 30320). Anyone interested in a detailed explanation of PDPS operations is urged to review one or both of these documents. Each is available from the agency's Technical Reference Division, room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, Docket 84–02, Notices 2 and 5. For the purpose of this rulemaking action, the agency will describe these operations briefly in this notice.

Except for individuals, who are authorized by the Privacy Act of 1974 to request information about themselves directly from the NDR, only States have direct access to the NDR under the 1982 Act, although certain other parties are authorized to request or receive NDR information through a participating State. In accordance with section 206 of the Act, States can request and receive NDR information for driver licensing, driver improvement and transportation safety purposes.

We propose to define these terms, in § 1327.3 of the regulation, as follows: "Drivers licensing purposes" would mean request made by States to determine if individuals applying for original, renewal, and duplicate licenses have had their driving privileges withdrawn in other States. This is the purpose for which States have been requesting information from the NDR since it was first established. Requests submitted for "transportation safety purposes" would include requests submitted on behalf of other parties authorized to receive information under the NDR Act of 1982, including the National Transportation Safety Board (NTSB), Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), Federal Railroad Administration, individuals, employers and prospective employers of railroad operators, and employers and prospective employers of motor vehicle operators (including Federal agencies). "Driver improvement purposes" would include requests submitted by chief driver licensing officials in connection with the control and rehabilitation of drivers who, based on their records, are suspected of being or known to be problem drivers. During the pilot test program, only Ohio submitted inquiries for this purpose, specifically to determine if individuals who were being considered for restoration of their driving privileges had driver licenses revoked or suspended in other States. The agency proposes to include also information requests related to court sentencing in this category, i.e., requests on behalf of State court officials to determine, during sentencing for motor vehicle-related violations, whether the individual has license revocations,

suspensions, convictions, or denials in other States. We request comments on whether the public believes the agency should accept any additional types of NDR inquiries under the "driver improvement" category.

Other authorized parties, by making a request through a participating State, may receive NDR information. The National Transportation Safety Board (NTSB) and the Federal Highway Administation (FHWA) may receive NDR information pursuant to accident investigations conducted by the NTSB or the FHWA. Employers (and prospective employers) of motor vehicle and railroad locomotive operators, the FAA, and the FRA may receive NDR information regarding individuals in connection with their employment as operators of transportation conveyances, provided the individual about whom any records would pertain initiates the request or authorizes the request to be made on his or her behalf. In addition, individuals may request NDR information concerning themselves.

To make a request, the State (known as the State of Inquiry (SOI)) asks the NDR to check whether an adverse action has been taken in any other State against an individual. The NDR file contains identifying (or pointer) information provided by the States about individuals against whom adverse actions have been taken. The information in the NDR on each individual is known as a "record".

If the NDR locates a record on the individual, it first provides a response to the inquiring State indicating that a record has been found. If the State's request is made on its own behalf, the NDR then obtains the adverse action information (Driver History Summary) from the State in which the action occurred (known as the State of Record (SOR)) and relays it, without interception, to the inquiring State. Upon receipt of the Driver History Summary, the State may also, at its option, submit a request through the NDR for the SOR to send a Driver License Abstract (DLA), or complete driver record. The DLA or complete driver record is forwarded directly from the SOR to the SOI. (In the States, a DLA is also commonly known as a motor vehicle record (MVR).) If the State's request is made on behalf of another authorized user, the NDR response idicating that a record has been found will only identify the State of record so that authorized user may request additional information relative to the individual's driver record directly from the SOR.

If the NDR does not locate a record, the response depends on the method of communication from the State and whether the request is on behalf of the State or another authorized user. States may communicate with the NDR by two methods: Interactive and batch. Interactive communication means an active two-way computer connection which allows requesters to receive information almost immediately. Batch communication refers to requests sent in a group (usually in large numbers), acted upon as a group, and the responses assembled and returned to the requester as a group. Batch communication may be through the mail or through Remote Job Entry (RJE). RJE denotes a type of computer-to-computer communication which is slower than interactive communication. Information sent by RJE is generally exchanged between the State and the NDR within 24 hours. A State using a batch method on its own behalf receives only the positive responses (regarding matches found) obtained in that group of requests. It does not receive negative responses except for those in connection with requests submitted on behalf of other authorized recipients described above. A State using the interactive method will receive a response indicating that a record was not found.

**Notification Procedures**

Section 204 of the NDR Act of 1982 provides that any State may become a participating State under the Act by notifying the agency in such form and according to such procedures as the agency shall establish by regulation. Any State interested in participating in the PDPS, under the proposed regulation, would be required to submit notification to NHTSA that certifies the following: (1) That it wishes to be considered a participating State; (2) that it intends to be bound by the requirements of the NDR Act of 1982 and § 1327.5 of the agency's regulation; and (3) the conversion steps, if any, it has already completed.

Upon receipt of this notification from a State, the agency would acknowledge its receipt and the State could then begin converting its system to PDPS. The major steps to be taken for a State to convert to PDPS are: (1) Implementing the State of Record function; and (2) establishing the procedures for making requests on behalf of itself and other authorized parties.

The agency intends to provide assistance to States during this conversion process. We would provide instructions which cover, for example, record formats and the manner in which transactions would be processed, as well as guidance on establishing the necessary electronic communication linkages, system and software changes required to both transmit information to and receive information from the NDR, and any other guidance deemed appropriate and necessary. The order in which States will receive assistance will be based on the order in which complete notifications of intent to become participating States are received by the NDR. In the event two or more complete notifications are received on the same date, the States' relative stage of development towards completing the conversion process will determine the order of priority for assistance.

A State's stage of development will be determined based on which one of the following groups it falls into, listed in descending order of priority, i.e., group #1 will receive the highest priority, group #2 will receive the next highest priority, etc.

(1) States that participated in the one-year pilot test program (North Dakota, Ohio, Virginia and Washington). We expect that these States will need to make few, if any, changes to convert fully to PDPS.

(2) States that have implemented the Rapid Response System (RRS) (Delaware, Iowa, New York, Oregon and Wisconsin). The RRS is an interactive inquiry capability that was developed to accommodate States that needed an instantaneous response capability pending implementation of the PDPS. It differs from the PDPS in that the substantive data received in response to an inquiry is obtained from the NDR file and not from the SOR.

(3) States that have implemented the Commercial Driver License (CDL) requirements and intend to participate in the NDR interactively. Because of its similarities to the NDR, the Commercial Driver License Information System (CDLIS) was designed so that States could send simultaneous inquiries to the NDR and CDLIS. Accordingly, as States implement CDL requirements, some have indicated that they have elected to take advantage of this simultaneous inquiry capability and establish interactive NDR communication at the same time. It is expected that fourteen (14) States will have implemented CDL requirements by early 1990. Of these, we believe at least nine (9) will ultimately participate in the NDR interactively.

(4) States that have implemented the CDL requirements and intend to participate in the NDR using RJE.

(5) States that have not progressed to one of these stages.

Once the State has completed all conversion steps, it would certify this fact to the agency. The agency would then determine that it complies with the

statutory and regulatory requirements (discussed further below) and certify the State as a "participating State" under PDPS.

The agency proposes to define the term, "participating State", as a State that has notified the agency of its intent to participate in the PDPS, and been certified by the agency as being in compliance with the requirements of the NDR Act of 1982 and § 1327.5 of this regulation.

Section 204 of the 1982 Act also provides that any State may terminate its status as a participating State under the Act by notifying the agency of its withdrawal from participation in such form, and according to such procedures, as the agency shall establish by regulation. Under the agency's proposed regulation, such notification must be in writing and provide the State's reason for terminating its participation. The termination would be effective not less than 30 days from the date on which the agency receives the notification. The proposed regulation provides that upon termination, a State could no longer participate, in any manner, in the NDR. The NDR would no longer process requests from the State. Moreover, the NDR would stop accepting the State's data and it would delete from the system any State data on file at that time. We propose to take this step to ensure that participating States are not provided with data that may be erroneous or no longer current, and to prevent the disclosure of such data in contravention of the privacy rights of individuals who may wrongly be identified.

NHTSA also proposes that any State previously certified by the agency as a "participating State", that changes its operations so that it no longer meets the statutory and regulatory requirements, will be notified by NHTSA that the certification will be withdrawn 30 days from the date of the notification. If the State does not come back into compliance within that period of time, it too could no longer participate, in any manner, in the NDR.

Any State that voluntarily terminates its participation in the NDR or is terminated by the agency due to non-compliance may reactivate its participation by notifying the Secretary of its intention to be bound by the requirements of the NDR Act of 1982 and § 1327.5 of the agency's regulation. Once the agency determines that the State complies with the statutory and regulatory requirements, it would re-certify the State as a PDPS participating State.

**Conditions for Becoming a Participating State**

As explained above, to become a participating State, a State must submit notification to the agency which includes, among other elements, a certification that the State intends to be bound by the requirements of the NDR Act of 1982 and § 1327.5 of the implementing regulation. The State must also be certified by the agency as having met the conditions, explained in detail below, which include:

(1) Reporting requirements of section 205 of the Act;

(2) Dual record reporting requirement of the transition procedures;

(3) State of Inquiry function, on the State's own behalf, regarding first time, non-minimum age driver license applicants;

(4) State of Inquiry function on behalf of other parties authorized to receive NDR inforamtion under section 206 of the Act; and

(5) State of Record function and responses to requests for driver license abstracts.

*1. Reporting Requirements of Section 205*

Section 204(a) of the NDR Act of 1982 provides that any State may become a participating State under the Act by notifying the Secretary of its intention to be bound by the provisions of section 205 of the Act. Under section 205, which governs reports by the States, the chief driver licensing official in each participating State is required to transmit to the NDR a report regarding any individual—

(1) Who denied a motor vehicle operator's license by such State for cause;

(2) Whose motor vehicle operator's license is canceled, revoked, or suspended by such State for cause; or

(3) Who is convicted under the laws of such State of the following motor vehicle-related offenses or comparable offenses—

(A) Operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance;

(B) A traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways;

(C) Failure to render aid or provide identification when involved in an accident which results in a fatality or personal injury; or

(D) Perjury or the knowledgeable making of a false affidavit or statement to officials in connection with activities governed by a law or regulation relating to the operation of a motor vehicle.

The American Association of Motor Vehicle Administrators (AAMVA) has adopted a uniform listing of violation codes, based on the American National Standards Institute (ANSI) Standard D20. The AAMVA adopted these codes to facilitate the exchange of information among the States. Attached to this notice, as appendix A, is an abbreviated listing of the violation codes from AAMVA's complete list that have been used by the NDR to categorize the adverse actions submitted by the States under the old NDR system, Public Law 86–660, as amended.

The agency proposes to define an action taken "for cause" in this regulation to mean that the action was based on any violation listed in appendix A. Accordingly, a State would be required to report to the NDR every denial, suspension, cancellation and revocation of a motor vehicle operator's license based on one or more of these violations to qualify as a participating State. We wish to point out that some of these codes have been recommended, but not yet approved by ANSI. Under our proposed rule, we would consider these recommended codes to be "for cause". Some of these codes pertain specifically to commercial drivers. The agency proposes to define the four convictions referred to above to include Codes DI 1, 2 and 7* (under section 204(a)(1)(A) of the Act), FA1, RK1 and SP1 (under section 204(a)(1)(B) of the Act), HR1 (under section 204(a)(1)(C) of the Act), and MR1–6 (under section 204(a)(1)(D) of the Act). A State would be required to report to the NDR every conviction for any of these offenses to qualify as a participating State under the regulation.

The Act also specifies, in section 205(b), that any report regarding an individual against whom a State has taken one of the adverse actions listed above, which is transmitted to the NDR by a chief driver licensing official, must contain certain identifying data and the name of the State transmitting the information. The agency's proposal would require that this information be provided in all reports submitted to the NDR, except that, as provided by the Act, any report concerning an occurrence which occurs during the two-year period preceding the date on which the State becomes a participating State shall be sufficient if it contains all the information that is available to the chief driver licensing official on that date.

In its final rule dated July 11, 1985 (50 FR 28193), the agency requires that each

*DI7 has been recommended, but not yet approved.

report submitted by a participating State shall also include a license status indicator, an element that would indicate whether the individual identified in that record currently holds a valid license. It was determined during that rulemaking process that inclusion of this element in the report will eliminate needless delays which will otherwise result under the new NDR. In addition, this element is required in order to comply with the provision in sections 206(b) (3) and (5) of the NDR Act which states, "There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than 3 years before the date of such request, unless such information relates to revocations or suspensions which are still in effect on the date of the request." The driver license status indicator will facilitate the identification of those records that relate to revocations and suspensions that are still in effect at the time of inquiry. All participating States would be required to update the license status indicator by notifying the agency whenever the status changes.

In accordance with the Act, this proposed regulation would require that records (pointer records) concerning occurrences that take place after a State becomes a participating State must be transmitted by the chief driver licensing official to the NDR not later than 31 days after the adverse action information is received by the motor vehicle department. Records concerning occurrences that take place before that time would have to be transmitted not later than 6 months after the date on which the State becomes a participating State. As indicated previously, States would not be required to report information concerning occurrences which take place before the two-year period preceding the date on which the State becomes a participating State. States are not prohibited from submitting, however, and the agency encourages them to submit, information concerning earlier occurrences.

*2. Dual Record Reporting Requirement*

In its Final Rule, published July 11, 1985 (50 FR 28191), the agency established procedures for an orderly transition from the old NDR, operating under the provisions of Public Law 86–660, as amended, to the PDPS, 23 CFR part 1325. The transition period is defined, in § 1325.2 of that regulation, as commencing with the effective date of the rule and ending upon the establishment of a fully electronic Register system. The transition regulation defines the term, "fully electronic Register system", to mean an NDR system in which all States that are participating are doing so pursuant to Public Law 97–364. We propose, in this notice, to clarify the definition in part 1325, on "Procedures for Transition to New National Driver Register", to reflect the procedures being proposed for inclusion in 23 CFR part 1327. We propose to redefine the term, "fully electronic Register system", to mean an NDR system in which each State that has submitted a complete notification in accordance with § 1327.4 of this part, has been certified as a "participating" State by the agency. In accordance with the Act and 23 CFR part 1325, when such a system has been established, the transition period will end.

During the transition period, in order to provide full service to all States, the transition regulation requires that PDPS States shall transmit to the NDR both pointer records, as defined above, and records containing the full substantive adverse action data, i.e., the information that States have historically provided under the provisions of Public Law 86–660, as amended. Now that the pilot test program has been completed, the regulation defines a PDPS State to mean a State that participates in the PDPS by submitting pointer records for inclusion in the NDR file and by providing information to States of Inquiry as a State of Record. We recognize that each of these States may not yet be considered a "participating State". A State may have completed, for example, certain conversion steps toward full participation in PDPS, but has not yet been certified as a fully "participating State."

In accordance with § 1325.4(a) of the transition procedure, this requirement for dual submission of pointer and substantive records shall continue until 40% of the States are operating under PDPS, or until the establishment of a fully electronic Register system, whichever occurs first. After that time, participating States will be required to transmit pointer records only.

*3. State of Inquiry Function on First Time, Non-Minimum Age Applicants*

The NDR Act of 1982, in section 206(a), authorizes participating States to request and receive NDR information for driver licensing, driver improvement, and transportation safety purposes. While the Act does not specifically require that a State submit requests for any of these purposes, the agency believes that the full benefits of the NDR would not be realized unless all States use the system. If even one State fails to submit NDR requests, the agency believes that is the State where problem drivers may well then go to obtain a license, thereby defeating the system's purpose.

Accordingly, NHTSA proposes that, at a minimum, a State must submit NDR requests regarding all first time, non-minimum age driver license applicants to qualify as a participating State under the regulation. Our data shows that the probability of receiving an NDR match is greatest with regard to these applicants. As explained earlier in this notice, participating States are authorized to submit requests also regarding renewals, duplicates, driver improvement, and transportation safety, as well as requests regarding minimum age drivers seeking an original license. However, States would not be required to submit these types of requests to qualify as participating States under the proposed regulation, except as provided below.

*4. State of Inquiry Function for Other NDR Users*

As described earlier, section 206(b) of the 1982 Act authorized the following parties to receive NDR information: (1) The National Transportation Safety Board (NTSB) and the Federal Highway Administration (FHWA) for accident investigation purposes; (2) employers and prospective employers regarding motor vehicle operators; (3) the Federal Aviation Administration (FAA) regarding any individual who has received or applied for an airman's certificate; (4) the Federal Railroad Administration (FRA) and employers or prospective employers regarding railroad locomotive operators; and (5) individuals who wish to learn what information about themselves, if any, is in the NDR file. Additionally, the transition procedures published in the final rule of July 11, 1985 state that once procedures are promulgated for the employer access provision, Federal agencies, which currently obtain information directly from the NDR, will be required like any other employer to request the employee or prospective employee to arrange to have information provided to them under the employee/employer access provision.

To receive NDR information under this section, however, these requests to the Register must be submitted through the chief driver licensing official of a participating State. For these provisions of the NDR Act of 1982 to have any meaning, participating States then must agree to serve as a State of Inquiry for these parties. On this basis, the agency proposes to require that participating States process NDR requests for other authorized NDR users to qualify as a participating State and establish routine

procedures and forms for doing so. The procedures and conditions under which these requests must be made are discussed in detail below.

The agency expects that not every participating State will be called on to process requests for each of these authorized users, as it would be more feasible for some users to channel their inquiries through particular States. For example, NTSB and FHWA, which make inquiries regarding accident investigations and are both headquartered in Washington, DC, may choose to submit all of their requests through a single participating State.

*5. State of Record Function and Responses to Driver License Abstract Requests*

As explained earlier, under the PDPS, the NDR will maintain only identification (pointer) data regarding individuals' driving records, and the States will maintain the substantive data. Therefore, when a match occurs as a result of an inquiry submitted to the NDR, the State of record must be able to provide driver record information to the requester. In order to accomplish this, the agency proposes to require that participating States implement the necessary systematic and procedural changes to establish the State of Record function and to respond to requests for driver history summaries. In addition, in a Notice published in the **Federal Register** by the agency on April 3, 1986 (51 FR 11445), NHTSA determined that the new PDPS would include a driver license abstract request mechanism. The mechanism permits States that request NDR information on their own behalf and receive a match from the Register to request a driver license abstract on the match automatically through the NDR. Only the request, and not the abstract itself, is relayed through the Register. In addition, the notice states that the feature would only be available to States, not to other authorized users. To obtain the driver license abstract, these users must submit a request directly to the State of Record. As provided for in that notice, the feature was evaluated as part of the one-year pilot test program and proved to be an effective improvement to the Driver Register System. Accordingly, the agency proposes to require, in its regulation, that participating States, to qualify, must response to requests for driver license abstracts forwarded to them through the NDR by transmitting the abstract directly to the State of Inquiry. Participating States would also be required to respond to requests for driver license abstracts submitted directly to them from other authorized users by transmitting the abstract to the user.

**Conditions and Procedures for Other Authorized Users of the NDR**

The NDR Act of 1982 in section 206 provides that each of the following groups may receive information regarding individuals from the NDR for specific authorized purposes: The National Transportation Safety Board (NTSB) and the Federal Highway Administration (FHWA) for accident investigation purposes, employers and prospective employers of motor vehicle operators, the Federal Aviation Administration regarding any individual who has received or applied for an airman's certificate, the Federal Railroad Administration (FRA) and employers or prospective employers regarding railroad locomotive operators, and individuals who wish to learn what information about themselves, if any, is on the NDR file. In accordance with the Act, the proposed regulation would require that the following conditions be met by these other authorized users in order for them to utilize this provision of the Act.

*NTSB and FHWA.* Section 206(b)(1) provides that the NTSB and the FHWA may request the chief driver licensing official of a State to obtain information from the NDR regarding any individual who is the subject of an accident investigation conducted by the Board or the Bureau of Motor Carrier Safety (renamed the Office of Motor Carriers (OMC)). As described in the rule published on July 11, 1985, procedures were established under an agreement with the District of Columbia driver licensing officials whereby NTSB and OMC submit their inquiries through the District of Columbia for processing. The agency proposes to continue this general arrangement whereby these two agencies would make their inquiries through a State. Under this proposal, however, once the NDR is fully electronic, the State through which these requests are transmitted must be a participating State. As is currently the practice, any NTSB or FHWA request for an NDR search would have to be submitted through the State with which arrangements have been made to process these requests. Upon receipt of a request from either of these agencies, the chief driver licensing official of the appropriate State would forward the request to the NDR. The chief driver licensing official would provide to the requesting agency the NDR response indicating either probable identification (match) or no record found. In the case of a probable identification, the State of record also would be identified in the response so that the NTSB or FHWA may obtain additional information regarding the individual's driving record.

*Employers/Prospective Employers of Motor Vehicle Operators (including Federal Agencies).* Section 206(b)(2) of the Act stipulates that any individual who is employed or who seeks employment as a driver of a motor vehicle may request the chief driver licensing official of the participating State in which the individual is employed or seeks employment to transmit information pertaining to him or her to the individual's employer or prospective employer. An employer or prospective employer may receive such information regarding any such individual, and shall make that information available to the affected individual. The agency proposes to define the individual's State of employment as the State in which the individual is licensed to drive a motor vehicle. The employee/prospective employee would either complete, sign and submit a request for an NDR file check directly to the chief driver licensing official of the participating State in which he or she is licensed or authorize his or her employer/prospective employer to do so by completing and signing a written consent. The request to the State or the written consent to the employer, whichever is used, must: (1) Identify the records to be released, (2) state as specifically as possible who is authorized to receive the records, (3) be signed by the individual (or legal representative as appropriate), (4) include the date of execution, and (5) state specifically that the authorization is valid for only one search of the NDR. It must also specifically state that the NDR identifies probable matches that require further inquiry for verification; that it is recommended, but not required, that the employer/prospective employer verify matches with the State of record; and that individuals have the right to request records regarding themselves from the NDR to verify their accuracy.

The NDR response which will state whether a match (probable identification) has occurred and, if so, the State of record and the current license status of the individual, will be sent to the chief driver licensing official who will provide it to the employer/prospective employer. The agency encourages the employer/prospective employer to obtain the substantive data relating to the record from the State of record and to verify that the person described in the record is the employee/prospective employee before taking further action. The Act provides under

this provision that there shall be no access to information in the Register for this purpose if the information was entered in the NDR more than 3 years before the date of the request for search.

*Federal Aviation Administration (FAA).* Section 206(b)(3) of the Act states that any individual who has applied for or received an airman's certificate may request the chief driver licensing official of a State to transmit information regarding the individual to the Administrator of the FAA. The Administrator of the FAA may receive such information and shall make the information available to the individual for review and written comment and shall not otherwise divulge or use such information except to verify information required to be reported to the Administrator by the airman when applying for a medical certificate and to evaluate whether the airman meets minimum standards to be issued an airman's medical certificate. The airman either would complete and submit a signed request for an NDR file search directly to the chief driver licensing official of a participating State or would authorize the FAA to do so by completing and signing a written consent. The request to the State or the written consent to the FAA, whichever is used, must: (1) Indentify the records to be released, (2) state as specifically as possible who is authorized to receive the records, (3) be signed by the individual (or legal representative as appropriate), (4) include the date of execution, and (5) state specifically that the authorization is valid for only one search of the NDR. It must also specifically state that the NDR identifies probable matches that require further inquiry for verification; that it is recommended, but not required, that the FAA verify matches with the State of record; and that individuals have the right to request records regarding themselves from the NDR to verify their accuracy. The NDR response would be sent to the chief driving licensing official who will provide it to the FAA and will state whether a match (probable identification) was found and, if so, the State of record and the current license status of the individual. The agency encourages the FAA to obtain the details of the record from the State of record and to verify that the person described in the record is the airman who holds or is applying for a certificate before taking further action. The Act provides that there shall be access to information in the Register under this provision which was entered in the Register more than three years before the date of the request, unless such information relates to revocations or suspensions that are still in effect on the date of the request.

*Federal Railroad Administration (FRA) and Employers/Prospective Employers of Locomotive Operators.* Section 206(b)(5) of the Act states that any individual who is employed by a railroad as an operator of a locomotive or who seeks employment with a railroad as an operator of a locomotive may request the chief driver licensing official of a State to transmit information regarding the individual to his or her employer or to the Secretary. The employee or prospective employee either would complete, sign, and submit a request for an NDR file search directly to the chief driver licensing official of a participating State or would authorize the employer or the FRA to do so by completing and signing a written consent. The request to the State or the written consent to the employer, prospective employer or the FRA, whichever is used, must: (1) Identify the records to be released, (2) state as specifically as possible who is authorized to receive the records, (3) be signed by the individual (or legal representative as appropriate), (4) include the date of execution, and (5) state specifically that the authorization is valid for only one search of the NDR. It must also specifically state that the NDR identifies probable matches that require further inquiry for verification; that it is recommended, but not required, that the employer/prospective employer or the FRA verify matches with the State of record; and that individuals have the right to request records regarding themselves from the NDR to verify their accuracy. The NDR response, which will state whether a match (probable identification) has occurred and, if so, the State of record and the current license status of the individual, will be sent to the chief driver licensing official who will provide it to the employer or the FRA, as applicable. The agency proposed to require the employer, prospective employee for review and comment. The agency encourages the employer or the FRA to obtain the substantive data relating to the record from the State of record and to verify that the person described in the record is the employee/prospective employee before taking further action. The Act provides that there shall be no access to information in the Register under this provision which was entered in the Register more than three years before the date of the request unless such information relates to revocations or suspensions that are still in effect on the date of the request.

These authorized users would also be required to follow all routine procedures, including any necessary agreements, provided for and established by the chief driver licensing official of the States.

The authorized user may utilize a third party to forward requests for NDR file searches to the NDR; however, the third party requester may not receive the NDR response since the third party is not authorized by the Act to receive NDR information. Both the authorized user and the individual concerned must sign a written consent authorizing the third party to act in this role.

*Individuals.* Section 206(b)(4) of the Act authorizes any individual, in order (1) to determine whether the Register is providing any data regarding him or her or the accuracy of such data; or (2) to obtain a certified copy of data provided through the Register regarding him or her, to request the chief driver licensing official of a State to obtain information regarding him or her from the NDR. (Individuals are authorized also, under the Privacy Act of 1974, to request such information directly from the NDR.) When requesting the information through the State, the individual must follow the procedures established by the State for this purpose. At a minimum, the individual will be required to prove his or her identity through the presentation of a document issued by a recognized organization (e.g., a driver's license and/or a credit card) which contains a means of verification such as a photograph or a signature, as well as the address to which the information, if any is found in the Register, is to be mailed.

The information in the NDR is susceptible to correction or alteration only to the extent that such records are at variance with the State records. This proposed rule provides that persons seeking to correct an NDR-maintained record should address their request to the chief of the National Driver Register. When any information contained in the Register is confirmed by the State of Record to be in error, the NDR will correct the record accordingly and advise all previous recipients of the information that a correction has been made.

**Privacy Considerations**

The new improved NDR is a Privacy Act system of records; therefore, whatever privacy considerations are warranted will be enforced.

The PDPS presents unique enhancements of data reliability and integrity. The change in custodianship of the data to the States and the use of

electronic data transmission are intended to ensure that the NDR data base is more accurate and current. In accordance with the 1982 NDR Act, the Secretary is no longer responsible for the accuracy of information relayed to participating States. Rather, he will rely directly on the States to provide information which is as accurate and as current as the data in the State's own data file. Further, because the size of the (pointer) file is greatly reduced, fewer data will be susceptible to recording errors.

Most NDR data are already in the public domain at the State level and consequently are not highly sensitive. Therefore, an intensive degree of security is not required to protect individuals' right to privacy. No specialized communication measures are necessary for the on-line portions of the system, particularly since States have strict access controls for their own system. The software techniques are adapted to maintain security through use of passwords, log-on procedures, etc. with minimal impact on users.

Under the 1982 Act, the NDR is being converted to a pointer system; once fully converted, substantive records will no longer be maintained in the system. The records maintained in the NDR identify only probable matches that require further inquiry for verification. Separate requests made by authorized users to States of record would verify these matches. NHTSA strongly recommends, but does not require, that these requests be made. The agency seeks comment on Privacy Act concerns or considerations regarding requests for and use of these probable matches with voluntary verification.

**Comments**

Interested persons are invited to comment on this proposal. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. (40 CFR 553.21.) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by May 21, 1990.

All comments received before the close of business on the comment closing date, will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in Docket 84–02, Notice 6 of the NHTSA Docket Section in room 5109, Nassif Building, 400 Seventh Street NW., Washington, DC 20509.

**Economic and Other Impacts**

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291, but is "significant" within the meaning of Department of Transportation regulatory policies and procedures. The Agency is not imposing any mandatory requirements on the States because participation in the NDR under this regulation is at the States' discretion. For States that elect to participate, the Agency anticipates that some of those States will have to upgrade their computer systems. However, this upgrade may be for purposes broader than their participation in the NDR, e.g., the Commerical Driver Licensing Information System for which interactive communication is required.

Because there will be virtually no economic effect from this rule, a regulatory evaluation is not necessary.

In accordance with the Regulatory Flexibility Act, the Agency has evaluated the effects of this rule on small entities. Based on that evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. The procedures set forth in the rule will apply to State driver licensing agencies of States that desire to participate in the NDR and, therefore, will not affect any small business entities or small governmental units.

The agency has also analyzed this action for the purpose of the National Environmental Policy Act. The agency has determined that this action will not have any effect on the human environment.

*Federalism Assessment*

The agency has analyzed this action under the principles and criteria of Executive Order 12612 and has determined that the proposed rule does not have any federalism implications.

**Information Collection Requirements**

The reporting requirements in this proposal are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, these proposed requirements will be submitted to the OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq). Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

**List of Subjects in 23 CFR Parts 1325 and 1327**

Driver licensing, Driver records, Transportation, Safety, National driver register, Highway safety.

In accordance with the foregoing, title 23 of the CFR is proposed to be amended as follows:

## PART 1325—TRANSITION PROCEDURES FROM CURRENT TO NEW NATIONAL DRIVER REGISTER

1. The authority citation for part 1325 continues to read as follows:

**Authority: Pub. L. 97–364, 96 Stat. 1740 (23 U.S.C. 401 note).**

2. Section 1325.3 is amended by revising paragraph (f) and adding paragraph (g) as follows:

**§ 1325.3 Definitions.**

* * * * *

(f) *Fully Electronic Register System.* NDR system in which all States that have submitted proper notification of intent to comply with the requirements of section 205 of the NDR Act of 1982 have been certified by the agency as participating States.

(g) *Participating State.* A State that has notified the agency of its intention to participate in the PDPS and has been certified by the agency as being in compliance with the requirements of the NDR Act of 1982 and § 1327.5 of this regulation.

3. A part 1327 would be added as set forth below.

## PART 1327—PROCEDURES FOR PARTICIPATING IN AND RECEIVING INFORMATION FROM THE NATIONAL DRIVER REGISTER PROBLEM DRIVER POINTER SYSTEM

Sec.

1327.1 Scope.
1327.2 Purpose.
1327.3 Definitions.
1327.4 Notification procedures.
1327.5 Conditions for becoming a participating State.
1327.6 Conditions and procedures for other authorized users of the NDR.

**Appendix A to Part 1327—American Association of Motor Vehicle Administrators Violations Exchange Code**

**Appendix B to Part 1327—OMB Clearance**

**Authority:** Pub. L. 97–364, 96 Stat. 1740 (23 U.S.C. 401 note); delegation of authority at 49 CFR 1.50.

### § 1327.1 Scope.

This part provides procedures for States to participate in the National Driver (NDR) Problem Driver Pointer System (PDPS) and for other authorized parties to receive information from the NDR. It includes, in accordance with section 204(c) of the NDR Act of 1982 (Pub. L. 97–364), procedures for a State to notify the Secretary of Transportation of its intention to be bound by the requirements of section 205 of the Act (i.e. requirements for reporting by chief driver licensing officials) and for a State to notify the Secretary in the event it becomes necessary to withdraw from participation. The rule also contains the conditions for becoming a participating State as well as conditions and procedures for other authorized users of the NDR.

### § 1327.2 Purpose.

The purpose of this part is to implement the NDR Act of 1982.

### § 1327.3 Definitions.

(a) *Driver History Summary* means a brief description of a driver license revocation, suspension, denial, cancellation or conviction which gives the date, the reason for the action, and the date of eligibility or the actual restoration date, if any.

(b) *Driver Improvement Purposes* means information requests made by chief driver licensing officials in connection with the control and rehabilitation of drivers who are, based on their records, suspected of being or known to be problem drivers.

(c) *Driver License Abstract* means the complete driver history of a driver's convictions, revocations, suspensions, denials, cancellations, accidents and interactions with the driver control and driver improvement authorities. Also known as Motor Vehicle Record (MVR) or Transcript.

(d) *Driver Licensing Purposes* means information requests made by chief driver licensing officials to determine if individuals applying for original, renewal, temporary, or duplicate licenses have had their driving privileges withdrawn in some other State.

(e) *For Cause* as used in § 1327.5(a) means that an adverse action taken by a State against an individual was based on any violation listed in Appendix A, American Association of Motor Vehicle Administrators (AAMVA) Violations Exchange Code abridged Listing of the AAMVA Codes, which is used by the NDR for recording license denials and withdrawals.

(f) *Fully Electronic Register System* means an NDR system in which all States that have submitted proper notification of intent to comply with the requirements of section 205 of the NDR Act of 1982 have been certified by the agency as participating States.

(g) *Individual Inquiries* means information requests made by a person either directly to the NDR or through a participating State to the NDR to determine whether the NDR contains any information regarding him or her; whether the NDR is disclosing any data regarding him or her or the accuracy of such data, or to obtain a certified copy of any information on the file pertaining to him or her.

(h) *Interactive Communication* means an active two-way computer connection which allows requesters to receive a response from the NDR almost immediately.

(i) *License Status Indicator* means an element in a driver record which would indicate whether the individual identified in the record currently holds a valid license.

(j) *Match* means the occurrence when the personal identifying information in an inquiry compares with the personal identifying information on a record in the NDR file such that there is a high probability that the individual identified on both records is the same person. See Probable Identification.

(k) *Non-Minimum Age Driver License Applicant* means a driver license applicant who is past the minimum age to apply for a license in the State making an NDR inquiry.

(l) *Non-PDPS State* means a State which operates under the old NDR by submitting complete substantive adverse driver licensing data to the NDR.

(m) *Participating State* means a State that has notified the agency of its intention to participate in the PDPS and has been certified by the agency as being in compliance with the requirements of the NDR Act of 1982 and § 1327.5 of this regulation.

(n) *Pointer Record* means a report containing the following data:

(1) The legal name, date of birth (including month, day, and year), sex, (and if the State collects such data) height, weight, and color of eyes;

(2) The name of the State transmitting such information;

(3) A Driver license number, if available;

(4) The social security account number, if used by the reporting State for driver record or motor vehicle license purposes; and

(5) An element which indicates whether the individual currently holds a valid license (license status indicator).

(o) *Probable Identification* means the occurrence when the personal identifying information in an inquiry compares with the identifying information on a record in the NDR file such that there is a high probability that the individual identified on both records is the same person. See Match.

(p) *Problem Driver Pointer System (PDPS)* means a system whereby the NDR serves as a conduit for retrieving information from the State which took adverse action against a driver (State of Record) and relaying that information without interception to the State requesting the information (State of Inquiry).

(q) *PDPS State* means a State which participates in the PDPS by submitting pointer records for inclusion in the NDR file and by providing information to States of Inquiry as a State of Record.

(r) *Remote Job Entry* means an automated communication method in which information is transmitted in batches (usually a large number of records) and responses are also transmitted in batches, all within a 24-hour period.

(s) *State of Inquiry* means the State submitting an inquiry to the NDR to determine if it contains information regarding a driver license applicant.

(t) *State of Record* means the State that transmits identification data to the NDR regarding individuals whose licenses have been withdrawn, maintains substantive data regarding those withdrawals, and transmits both summary and detailed motor vehicle records to States of Inquiry.

(u) *Substantive Adverse Action Data* means data which give the details regarding a State's revocation, suspension, denial, or conviction of a driver, such as date, reason, eligible/restoration date, etc.

(v) *Transportation Safety Purposes* means information requests submitted on behalf of other parties authorized by the NDR Act of 1982 to receive NDR information, including National Transportation Safety Board, Federal Highway Administration, Federal Aviation Administration, Federal Railroad Administration, employers and prospective employers of railroad locomotive operators, employers and prospective employers of motor vehicle operators (including Federal Agencies), and individuals regarding themselves.

(w) *Transition Period* means the period which began on July 11, 1985 and will continue until a fully electronic register system is established.

**§ 1327.4 Notification procedures.**

(a) *Participation.* (1) The chief driver licensing official of a State that wishes to participate in the NDR under the Problem Driver Pointer System (PDPS) shall send a letter to the National Highway Traffic Safety Administration (NHTSA) certifying that it wishes to be considered a participating State, that it intends to be bound by the requirements of section 205 of the NDR Act of 1982 and § 1327.5 of this regulation, and what conversion steps, if any, it has already completed.

(2) Within 20 days after receipt of the State's notification, NHTSA will acknowledge receipt and provide detailed instructions to the State of the steps to be taken for converting and operating under the PDPS.

(3) NHTSA will establish a schedule for providing assistance to the States during their conversion process. The agency will assign priorities to the States based on the order in which complete notifications are received. In the event two or more complete notifications are received on the same date, the agency will assign priorities based on those State's relative stage of development towards completing the conversion process. A States' stage of development will be determined based on which one of the following groups it falls into, listed in descending order of priority, i.e., group #1 will receive the highest priority, group #2 will receive the next highest priority, etc.

(i) States that participated in the PDPS pilot test program (North Dakota, Ohio, Virginia and Washington);

(ii) States that have implemented the Rapid Response System (the interactive inquiry capability that was developed to accommodate States that needed instantaneous response capability pending implementation of PDPS);

(iii) States that have implemented the Commercial Motor Vehicle Safety Act (CMVSA) requirements and intend to participate in the NDR interactively;

(iv) States that have implemented the CMVSA requirements and intend to participate in the NDR using remote job entry;

(v) States that have not progressed to one of the above stages.

(4) The chief driver licensing official of each State that has notified the agency of its intention to become a PDPS State will, at such time as it has completed all conversion steps, certify this fact to the agency.

(5) Upon receipt, review and approval of certification from the State, NHTSA shall certify the State as a participating State under PDPS.

(b) *Termination or cancellation.* (1) If a State finds it necessary to discontinue participation, the chief driver licensing official of the participating State will notify the agency in writing, providing the reason for terminating its participation.

(2) The effective date of termination will be no less than 30 days after notification of termination.

(3) NHTSA shall notify any participating State that changes its operations such that it no longer meets statutory and regulatory requirements, that its certification will be withdrawn if it does not come back into compliance within 30 days from the date of notification.

(4) If a participating State does not come back into compliance with statutory and regulatory requirements within the aforementioned 30-day period, NHTSA shall send a letter to the chief driver licensing official cancelling its certification.

(5) NHTSA shall remove all records on file and shall not accept any inquiries or reports from a State whose participation in the NDR has been terminated or cancelled.

(6) To be reinstated as a participating State after being terminated or cancelled, the chief driver licensing official shall follow the notification procedures in paragraphs (b) (1) and (4) of this subsection.

(7) NHTSA shall re-certify a State as a participating State upon determining that the State complies with the statutory and regulatory requirements for participation, in accordance with paragraphs (b) (2), (3) and (5) of this subsection.

**§ 1327.5 Conditions for becoming a participating state.**

(a) *Reporting requirements.* (1) The chief driver licensing official in each participating State shall transmit to the NDR a report regarding any individual—

(i) Who is denied a motor vehicle operator's license by such State for cause;

(ii) Whose motor vehicle operator's license is canceled, revoked, or suspended by such State for cause; or

(iii) Who is convicted under the laws of such State of the following motor vehicle-related offenses or comparable offenses—

(A) Operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance;

(B) A traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways;

(C) Failure to render aid or provide identification when involved in an accident which results in a fatality or personal injury; or

(D) Perjury or the knowledgeable making of a false affidavit or statement to officials in connection with activities governed by a law or regulation relating to the operation of a motor vehicle.

(2) Any report regarding any individual which is transmitted by a chief driver licensing official pursuant to this requirement shall contain the following data:

(i) The legal name, date of birth (including day, month, and year), sex, (and if the State collects such data) height, weight, color of eyes, and color of hair;

(ii) The name of the State transmitting such information;

(iii) The social security account number, if used by the reporting State for driver record or motor vehicle license purposes, and the motor vehicle operator's license number of such individual (if that number is different from the operator's social security account number); and

(iv) The license status indicator, indicating whether the individual currently holds a valid license, except that any report concerning an occurrence described above which occurs during the two-year period preceding the date on which such State becomes a participating State shall be sufficient if it contains all such information as is available to the chief driver licensing official on such date.

(3) These records, defined as pointer records, shall be transmitted by the chief driver licensing official to the NDR not later than 31 days after the adverse action information is received by the motor vehicle department or 6 months after the date on which such State becomes a participating State.

(4) No State will be required to report information concerning an occurrence which happened before the two-year

period preceding the date on which the State becomes a participating State.

(b) *Dual record reporting requirement.* The chief driver licensing official in each participating State shall transmit to the NDR a pointer record regarding any individual against whom adverse action, as described in section 205 of Public Law 97–364, has been taken.

(2) The chief driver licensing official in each participating State shall also transmit to the NDR the full substantive adverse action data on any individual against whom adverse action, as described in Public Law 86–660 as amended by title IV of Public Law 89–563, 80 Stat. 730 (23 U.S.C. 313 note), has been taken until such time as either 40% of the participating States operate under PDPS or the establishment of a fully electronic Register system, whichever occurs first.

(c) *State of inquiry function on State's own behalf regarding first-time non-minimum age driver license applicants.* (1) The chief driver licensing official of a participating State shall submit an inquiry to the NDR for each first-time, non-minimum age driver license applicant.

(2) The chief driver licensing official of a participating State may submit inquiries on renewal and duplicate license applicants; and for driver improvement purposes.

(d) *State of inquiry function on behalf of other authorized users.* The chief driver licensing official of a participating State shall provide for and establish routine procedures and forms to accept requests for NDR file checks from the following groups which are authorized to receive information from the NDR file through participating States:

(1) National Transportation Safety Board (NTSB) and Federal Highway Administration (FHWA) for accident investigation purposes. The Chairman of the NTSB and/or the Administrator of the FHWA shall submit requests for NDR searches in writing through the participating State with which previous arrangements have been made to process these requests. The chief driver licensing official shall provide to the requesting agency the NDR response indicating either Probable Identification (match) or No Record Found. In the case of a probable identification, the State of record will also be identified in the response so that the NTSB or FHWA may obtain additional information regarding the individual's driving record.

(2) Employers and Prospective Employers of individuals licensed to drive a motor vehicle in the State (including Federal Agencies); Federal Aviation Administration regarding any individual who has applied for or received an airman's certificate; and the Federal Railroad Administration and employers/prospective employers regarding individuals who are employed or seeking employment as railroad locomotive operators.

(i) The procedures or forms developed by the chief driver licensing official to facilitate NDR searches for these authorized users shall provide for the request to be made by the individual or by the authorized user if the individual first consented to the search in writing. Any request to the chief driver licensing official and any written consent by the individual shall:

(A) Identify the records to be released,

(B) Specifically state who is authorized to receive the records,

(C) Be signed and dated by the individual or the individual's legal representative,

(D) Specifically state that the authorization is valid for only one search of the NDR, and

(E) Specifically state that the NDR identifies probable matches that require further inquiry for verification; that it is recommended, but not required, that the authorized recipient of the information verify matches with the State of record; and that individuals have the right to request records regarding themselves from the NDR to verify their accuracy.

(ii) Any request made by an authorized user may include, in lieu of the actual information described in paragraphs (d)(2)(i) (C) through (E) of this subsection, a certification that a written consent was signed and dated by the individual or the individual's legal representative, specifically stated that the authorization is valid for only one search of the NDR, and specifically stated that the NDR identifies probable matches that require further inquiry for verification; that it is recommended, but not required, that the authorized recipient of the information verify matches with the State of record; and that individuals have the right to request records regarding themselves from the NDR to verify their accuracy.

(iii) The chief driver licensing official shall provide to the authorized user a response indicating either Probable Identification (match) or No Record Found. In the case of a probable identification, the current license status of the individual and the State of record will also be included in the response so that the authorized user may obtain additional information regarding the individual's driving record.

(3) Individuals who wish to learn what information about themselves, if any, is in the NDR file, or whether and to whom such information has been disclosed.

(i) Upon receiving a request for an NDR search from an individual for information concerning himself or herself, the chief driver licensing official shall inform the individual of the procedure for conducting such a search and provide the individual a request form which, when properly completed, will either be forwarded to the NDR by the chief driver licensing official or by the individual.

(ii) The request form provided by the chief driver licensing official to the individual must provide for the following:

(A) Full legal name.

(B) Other names used (nicknames, professional name, maiden name, etc.).

(C) Month, day and year of birth.

(D) Sex.

(E) Height.

(F) Weight.

(G) Color of eyes.

(H) Social Security Number (SSN) and/or driver license number. (Provision of SSN is voluntary.)

(I) Individual's full address.

(J) Home and office telephone number. (Provision of telephone number is voluntary.)

(K) Signature.

(L) Proof of identification. Acceptable forms of identification are driver's license, birth certificate, credit card, employee identification card, and other forms of identification normally accepted by the State.

(M) Notarization. This is required only if the individual chooses to mail the request directly to the NDR.

(iii) Upon receipt of the individual's request for a NDR file check, NHTSA will search its computer file and mail the results (i.e., notification of no record found or copies of any records found) directly to the individual.

(iv) The chief driver licensing official shall advise the requesting individual to contact the Chief, National Driver Register by mail or telephone for guidance regarding the procedure for alteration or correction of NDR-maintained records in the event he or she believes they are incorrect.

(e) *State of record function and responses to driver license abstract requirements.* (1) The chief driver licensing official of a participating State shall implement the necessary computer system and procedures to respond to requests for driver record information.

(2) The chief driver licensing official of a participating State shall provide driver history summary information from its file to the State of inquiry upon

receipt of a request for such either from the NDR or from the State of inquiry.

(3) The chief driver licensing official of a participating State of record shall forward a driver license abstract (full motor vehicle record) to the State of inquiry upon receipt of a request for such either from the NDR or directly from the State of inquiry, and to other authorized users upon receipt of a request directly from the user.

**§ 1327.6 Conditions and Procedures for Other Authorized Users of the NDR.**

(a) *NTSB and FHWA.* To initiate an NDR file check before the NDR is fully electronic, the National Transportation Safety Board or the Federal Highway Administration (Office of Motor Carriers) shall submit a request for such check to the State with which previous arrangements have been made, in accordance with procedures established by that State for this purpose. To initiate an NDR file check once the NDR is fully electronic, the NTSB or FHWA (OMC) shall submit a request for such check to the participating State with which previous arrangements have been made, in accordance with procedures established by that State for this purpose.

(b) *Employers or prospective employers of motor vehicle operators (including Federal agencies).* (1) To initiate an NDR file check, the individual employed or seeking employment as a motor vehicle operator shall either:

(i) Complete, sign and submit a request for an NDR file check directly to the chief driver licensing official of the participating State in which he or she is licensed to operate a motor vehicle in accordance with procedures established by that State for this purpose, or

(ii) Authorize, by completing and signing a written consent, his or her employer/prospective employer to request a file check through the chief driver licensing official of the participating State in which the individual is licensed to operate a motor vehicle in accordance with the procedures established by that State for this purpose.

(2) The request for an NDR file check or the written consent, whichever is used, must:

(i) Identify the records to be released,

(ii) State as specifically as possible who is authorized to receive the records,

(iii) Be signed and dated by the individual (or legal representative as appropriate),

(iv) Specifically state that the authorization is valid for only one search of the NDR, and

(v) Specifically state that the NDR identifies probable matches that require further inquiry for verification; that it is recommended, but not required, that the employer/prospective employer verify matches with the State or record; and that individuals have the right to request records regarding themselves from the NDR to verify their accuracy.

(3) Upon receipt of the NDR response, the employer/prospective employer shall make the information available to the employer/prospective employee.

(4) In the case of a match (probable identification), the employer/prospective employer should obtain the substantive data relating to the record from the State of record and verify that the person named on the probable identification is in fact the employee/prospective employee before using the information as the basis for any action against the individual.

(c) *Federal Aviation Administration.* (1) To initiate an NDR file check, the individual who has applied for or received an airman's certificate shall either:

(i) Complete, sign and submit a request for an NDR file check directly to the chief driver licensing official of a participating State in accordance with the procedures established by that State for this purpose, or

(ii) Authorize, by completing and signing a written consent, the FAA to request the file check through the chief driver licensing official of a participating State in accordance with procedures established by that State for this purpose.

(2) The request for an NDR file check or the written consent, whichever is used, must:

(i) Identify the records to be released,

(ii) State as specifically as possible who is authorized to receive the record,

(iii) Be signed and dated by the individual (or legal representative as appropriate),

(iv) Specifically state that the authorization is valid for only one search of the NDR, and

(v) Specifically state that the NDR identifies probable matches that require further inquiry for verification; that it is recommended, but not required, that the FAA verify matches with the State of record; and that individuals have the right to request records regarding themselves from the NDR to verify their accuracy.

(3) Upon receipt of the NDR response, the FAA shall make the information available to the airman for review and written comment.

(4) In the case of a match (probable identification), the FAA should obtain the substantive data relating to the record from the State of record and verify that the person named on the probable identification is in fact the airman concerned before using the information as the basis for any action against the individual.

(d) *Federal Railroad Administration and/or employers or prospective employers of railroad locomotive operators.* (1) To initiate an NDR file check, the individual employed or seeking employment as a locomotive operator shall either:

(i) Complete, sign and submit a request for an NDR file check directly to the chief driver licensing official of a participating State in accordance with the procedures established by that State for this purpose, or

(ii) Authorize, by completing and signing a written consent, the FRA or his or her employer/prospective employer, as applicable, to request a file check through the chief driver licensing official of a participating State in accordance with procedures established by that State for this purpose.

(2) The request for an NDR file check or the written consent, whichever is used, must:

(i) Identify the records to be released,

(ii) State as specifically as possible who is authorized to receive the records,

(iii) Be signed and dated by the individual (or legal representative as appropriate),

(iv) Specifically state that the authorization is valid for only one search of the NDR, and

(v) Specifically state that the NDR identifies probable matches that require further injury for verification; that it is recommended, but not required, that the employer/prospective employer or the FRA verify matches with the State of record; and that individuals have the right to request records regarding themselves from the NDR to verify their accuracy.

(3) Upon receipt of the NDR response, the FRA or the employer/prospective employer, as applicable, shall make the information available to the individual.

(4) In the case of a match (probable identification), the FRA or the employer or prospective employer, as applicable, should obtain the substantive data relating to the record from the State of record and verify that the person named on the probable identification is in fact the individual concerned before using the information as the basis for any action against the individual.

(e) If a third party is used by any of the above authorized users to request the NDR check, both the individual concerned and an authorized representative of the authorized user organization shall sign a written consent

authorizing the third party to act in this role. The written consent must:

(1) Identify the records to be released,

(2) State as specifically as possible who is authorized to request the records, and that such party is not authorized to receive NDR information.

(3) Be signed and dated by the individual (or legal representative as appropriate) and an authorized representative of the authorized user organization.

(4) Specifically state that the request authorization is valid for only one search of the NDR, and

(5) Specifically state that the NDR identifies probable matches that require further inquiry for verification; that it is recommended, but not required, that the authorized recipient of the information verify matches with the State of record; and that individuals have the right to request records regarding themselves from the NDR to verify their accuracy. The third party may not, however, receive the NDR response to a file search.

(f) Individuals. (1) When a check of the NDR is desired by any individual in order to determine whether the NDR is disclosing any data regarding him or her or the accuracy of such data, or to obtain a copy of the data regarding him or her, the individual shall submit his or her request to a participating State in accordance with the procedures established by that State for this purpose.

(2) The individual will be asked to provide the following information to the chief driver licensing official in order to establish positive identification:

(i) Full legal name.

(ii) Other names used (nickname, professional name, maiden name, etc.).

(iii) Month, day and year of birth.

(iv) Sex.

(v) Height.

(vi) Weight.

(vii) Color of eyes.

(viii) Driver license number and/or Social Security Number (SSN) (Provision of SSN is optional).

(ix) Full address.

(x) Signature.

(xi) Proof of identification. (Acceptable forms of identification are driver's license, birth certificate, credit card, employee identification card, and other forms of identification normally accepted by the State.)

(xii) Notarization. (This is required only if the individual chooses to mail the request directly to the NDR.)

(3) Individuals are authorized also, under the Privacy Act of 1974, to request such information directly from the NDR.

(4) Individuals seeking to correct an NDR-maintained record should address their request to the chief of the National Driver Register. When any information contained in the Register is confirmed by the State of Record to be in error, the NDR will correct the record accordingly and advise all previous recipients of the information that a correction has been made.

APPENDIX A TO PART 1327—AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS VIOLATIONS EXCHANGE CODE (ABRIDGED LISTING OF THE AAMVA CODES USED BY THE NDR FOR RECORDING DRIVER LICENSE DENIALS AND WITHDRAWALS)

| Code | |
|---|---|
| DI | Driving While Intoxicated. Violations Pertaining to Intoxicants. |
| DI1 | Driving while under the intoxicating influence of alcohol, narcotics, or pathogenic drugs. |
| DI2 | Driving while under the intoxicating influence of medication or other substances not intended to produce intoxication as a result of normal use. |
| DI3 | Refusal to submit to test for alcohol after arrest for driving while intoxicated or suspicion of intoxication. |
| DI4 | Illegal possession of alcohol or drugs in motor vehicle. |
| DI5 [1] | Administrative per se. |
| DI6 [1] | Driving while impaired. |
| DI7 [1] | Driving a commercial motor vehicle while under the influence of alcohol or a controlled substance. |
| DS | Disability. |
| DS1 | Inability to pass one or more tests required for driver license. |
| DS2 | Operating a motor vehicle improperly because of physical or mental disability. |
| DS3 | Failure to discontinue operating vehicle after onset of physical or mental disability (including uncontrollable drowsiness). |
| FA | Fatality. |
| FA1 | Violation of a motor vehicle law resulting in the death of another person. |
| FE | Felony. |
| FE1 | Using a motor vehicle as the device for committing a felony. |
| FE2 | Using a motor vehicle in connection with a felony. |
| FE3 | Using a motor vehicle to aid and abet a felon. |
| FE4 [1] | Using a commercial motor vehicle in the commission of a felony. |
| FE5 [1] | Using a commercial motor vehicle in the commission of a felony while transporting a hazardous material. |
| FR | Financial Responsibility. |
| FR1 | Unsatisfied judgment. |
| FR2 | Failure to meet requirements of the security-following-accident provisions of the FR law. |
| FR3 | Failure to file future proof of financial responsibility following conviction for violation of motor vehicle law. |
| FR4 | Failure to file future proof of financial responsibility as required under any other provision of the FR law. |
| FR5 | Failure to maintain required compulsory liability insurance. |
| HR | Hit and Run. Leaving the Scene. Evading Arrest. |

APPENDIX A TO PART 1327—AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS VIOLATIONS EXCHANGE CODE (ABRIDGED LISTING OF THE AAMVA CODES USED BY THE NDR FOR RECORDING DRIVER LICENSE DENIALS AND WITHDRAWALS)—Continued

| Code | |
|---|---|
| HR1 | Failure to stop and render aid after involvement in accident resulting in bodily injury. |
| HR2 | Failure to stop and reveal identity after involvement in accident resulting in property damage only. |
| HR3 | Leaving the scene of an accident after providing aid or identity but before arrival of police. |
| HR4 | Evading arrest by fleeing the scene of citation or roadblock. |
| HR5 | Evading arrest by extinguishing lights (when lights required). |
| HR6 [1] | Leaving the scene of an accident involving a commercial motor vehicle operated by such person. |
| HV [2] | Habitual Violator. Not an AAMVA code. For NDR use only. |
| MR | Misrepresentation. Contributory Violations. |
| MR1 | Misrepresentation of identity or other facts to obtain a driver license. (If registration or title involved, see RT.) |
| MR2 | Displaying a driver license which is invalid because of alteration, counterfeiting, or withdrawal (revocation, suspension, etc.). |
| MR3 | Displaying the driver license of another person. |
| MR4 | Loaning a driver license. |
| MR5 | Obtaining or applying for a duplicate driver license during withdrawal. |
| MR6 | Misrepresentation of identity or other facts to avoid arrest or prosecution. |
| RK | Reckless, Careless, or Negligent Driving. |
| RK1 | Heedless, willful, wanton, or reckless disregard of the rights or safety of others in operating a motor vehicle, endangering persons or property. |
| RK2 | Operating a motor vehicle without the exercise of care and caution required to avoid danger to persons or property. |
| RK3 | Transporting hazardous substances without required safety devices or precautions. |
| RV | Repeated Violations. |
| RV1 | Recurrence of violations requiring mandatory action of the licensing authority as specified by law. |
| RV2 | Accumulation of violations resulting in mandatory action of the licensing authority because of statutory point system. |
| RV3 | Accumulation of violations resulting in discretionary action by the licensing authority. |
| RV4 | Committing serious traffic violation involving a commercial motor vehicle operated by such person. |
| SP | Speeding. |
| SP1 | Contest racing on public trafficway. |
| SP2 | Prima facie speed violation or driving too fast for conditions. |
| SP3 | Speed in excess of posted maximum. |
| SP5 | Operating at erratic or suddenly changing speeds. |

APPENDIX A TO PART 1327.—AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS VIOLATIONS EXCHANGE CODE (ABRIDGED LISTING OF THE AAMVA CODES USED BY THE NDR FOR RECORDING DRIVER LICENSE DENIALS AND WITHDRAWALS)—Continued

| Code | |
|---|---|
| SP6 [1] | Excessive speeding in a commercial vehicle. |
| | Unsatisfied Judgment (See FR) |
| VR | Violation of Restriction. |
| | Licensing Requirements. |
| VR1 | Driving while revoked. |
| VR2 | Driving while suspended. |
| VR3 | Driving while license denied. |
| VR5 | Operating without being licensed or without license required for type of vehicle operated. |
| VR6 | Allowing an unlicensed operator to drive. |

[1] Recommended to AAMVA in response to a ballot on approval of a revision to the American National Standards Institute (ANSI) D20.1, "States' Model Motorist Data Base".

[2] Habitual Violator (HV) code was added to the AAMVA Violations Exchange Code by the NDR to accommodate the many States who enacted an HV law after the AAMVA Violations Exchange Code was developed. To be adjudged a Habitual Violator normally requires having been convicted of three major violations.

### Appendix B to Part 1327—OMB Clearance

The OMB clearance number for this regulation is _____.

Issued on: March 29, 1990.

**Adele Derby,**

*Associate Administrator for Traffic Safety Programs.*

[FR Doc. 90-7732 Filed 3-30-90; 4:16 pm]

BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 4

**[Notice No. 699]**

### Standards of Fill for Wine; New 500 Milliliter Size

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** ATF is proposing to add a new standard of fill for wine. The proposal would permit wine to be bottled, removed from bond or customs custody, and entered into interstate commerce in containers of 500 milliliters (ml). Current regulations permit the 500 ml size only for exports and intrastate commerce, but not for interstate commerce. The proposal is being made pursuant to a petition from about 100 persons in the wine industry. The reasons in favor of the proposal are discussed below under "Supplementary Information."

**DATES:** Comments must be submitted by June 4, 1990.

**ADDRESSES:** Written comments should be submited to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 [Attn: Notice No. _____.

Copies of the petition, the proposed amendment, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve Simon, Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226; (202) 566-7531.

**SUPPLEMENTARY INFORMATION:**

#### Background

ATF regulations in 27 CFR 4.73 provide metric standards of fill for wine. The following standards of fill are currently provided: 50 ml, 100 ml, 187 ml, 375 ml, 750 ml, 1 liter, 1.5 liters, and 3 liters. Sizes larger than 3 liters are permitted if they are in even-liter quantities (4 liters, 5 liters, 6 liters, etc.). Containers of 18 liters or more are not subject to the standards of fill, but the net contents of such containers must be stated in accordance with 27 CFR 4.37. The standards of fill apply to imported and domestic wine in interstate commerce, but they do not apply to exported wine, or to wine for sale only within a single State (intrastate commerce) pursuant to a certificate of exemption.

Metric standards of fill for wine were first prescribed by Treasury Decision (T.D.) ATF-12 (39 FR 45216, Dec. 31, 1974; corrected at 40 FR 1240, Jan. 7, 1975). The metric standards became mandatory on January 1, 1979. Previous regulations had prescribed 16 different sizes for domestic products (including the 15/16 quart size for aperitif wines) and had exempted imports form all size restrictions. In consequence, there was an excessive proliferation of sizes. This was found to be confusing to consumers. One of the purposes of T.D. ATF-12 was to alleviate this confusion.

Since the publication of T.D. ATF-12, the standards of fill for wine have been amended twice. In both instances, additional sizes were added in response to industry and consumer demand. T.D. ATF-49 (43 FR 19846, May 9, 1978) allowed even-liter sizes larger than 3 liters and exempted containers of 18 liters or more from the standards of fill. T.D. ATF-76 (46 FR 1725, Jan. 7, 1981) added the 50 ml miniature size, which is used primarily for single servings of dessert wine.

Nevertheless, other requests for additional sizes have not been granted. Commenters participating in the rulemaking process that preceded T.D. ATF-12 requested certain additional sizes, including 500 ml, but these were not granted, because of the desire to prescribe as few sizes as reasonably possible. ATF took this action in order to protect the consumer and maintain an orderly marketplace. With an increase in the number of sizes, consumers may be subject to deception, as well as confusion, because of the similarity of bottles containing different amounts of wine.

Subsequent to T.D. ATF-12, there have been other requests for addition of a 500 ml wine bottle. These have likewise been denied. The reasons cited for these denials were: (1) There was no apparent need for this size, since it is fairly close to the authorized 375 ml size. (2) There seemed to be a possibility of consumer deception, due to similarity with the 375 ml bottle. (3) The standards of fill for wine are generally based on the 750 ml size (most other sizes are even fractions or multiples of this basic size to facilitate easy comparison); a 500 ml size would not fit into this pattern. (4) There was no evidence of significant demand for a 500 ml size. (5) ATF opposed any tendency to return to the "size proliferation" that preceded the establishment of metric standards of fill.

The possibility of consumer confusion and deception was a major factor in ATF's decision to eliminate the 500 ml size for distilled spirits (T.D. ATF-228, 51 FR 16167, May 1, 1986; effective July 1, 1989). Commenters had claimed that even members of the alcoholic beverage industry were having difficulty distinguishing between the 375 ml and 500 ml sizes. Retailers and wholesalers also claimed that stocking both sizes was causing unnecessary additional costs in storage, handling, and displaying. (However, ATF notes that these reasons may not be as applicable to wine as to the distilled spirits; in particular, the confusion between bottle sizes is undoubtedly more significant when combined with the greater variety of distilled spirits bottle shapes.)

On June 24, 1987, AFT opened up to public discussion the entire subject of standards of fill for wine and distilled

spirits. This was done by publishing an advance notice of proposed rulemaking (Notice No. 633, 52 FR 23685). The impetus for this action was a petition from the Washington State Liquor Control Board, which requested certain exceptions from the standards of fill to facilitate "parallel" importation. ("Parallel" importation, also known as the "gray market," is the importation of authentic foreign alcoholic beverages by an importer who is not authorized by the foreign producer, despite the existence of an exclusive distribution agreement between the producer and an authorized U.S. importer.) Notice No. 633 requested comments, not only on the specific Washington State proposals, but also on the general issue of whether the existing standards of fill should be retained, revised, or eliminated.

Most commenters who responded to Notice No. 633 favored retaining the existing sizes and opposed the special exceptions that Washington State had requested. In addition, several commenters again brought up the suggestion of adding a 500 ml authorized size for wine. On the other hand, several other commenters, who favored retaining the current metric sizes and opposed the Washington State petition, supported their opinion by citing the elimination of the 500 ml size for distilled spirits and ATF's prior rejection of petitions for the 500 ml wine and 2 liter distilled spirits containers.

**Petition for 500 ml Wine Bottle**

Under 27 CFR 71.41(c), any interested person may petition ATF for the issuance, amendment, or repeal of a regulation. The petition must give cogent reasons for the proposed action.

On March 27, 1989, a petition was received from Mr. George Vierra, general partner of Merlion Winery, requesting the establishment of a new 500 ml standard of fill for wine. With the petition, there were supporting statements from 52 wineries and 14 distributors. Subsequently, Mr. Vierra submitted 28 additional supporting statements from persons representing 10 wineries and at least 4 distributors.

Further support for Mr. Vierra's proposal was forthcoming from other sources. Several individuals wrote on their own to express support. Anthony Dias Blue, a nationally syndicated wine writer, published an article favoring the proposal. A similar article by Dan Berger of the Los Angeles Times was also widely published.

Another article, which appeared in the March/April 1989 issue of "Vineyard & Winery Management," indicated that 18% of U.S. wineries may be interested in the 500 ml bottle as a new standard size. (By comparison, the same article indicated that less than 5% use the 187 ml size.) The article quoted one winery representation as saying, "The 500 ml bottle is the future—it is just right for two people and still large enough to keep costs down. The 375 ml is too small and the 750 ml is too large."

This demonstration of support indicates that there is significant interest in the use of a 500 ml wine bottle. Some of the reasons in favor of its usage were expressed by Mr. Vierra as follows:

> As you know, the most popular size for wine bottles in the U.S. is 750 milliliters. The 375 milliliter is also permitted * * * Those few table wines bottled in 375 ml containers, provide an inadequate amount of wine for two people at the dinner table. A 375 ml bottle offers each a 6.4 ounce glass of wine, usually too little for the dining couple. A full 750 ml bottle of wine is too much for two people to consume. The restaurant-dining couple's usual choice is, ordering a full bottle of wine and drinking more wine than needed, ordering a 375 ml bottle, among those few available, and having less than desired, or ordering a glass of wine from the restaurant blackboard, if the restaurant makes such an offer. Once they make the decision to purchase the 750 ml bottle, they normally will drink the whole bottle. That left behind in the bottle, if taken from the restaurant (or left over at the dinner table at home), does not speak well for the brand.
>
> The 500 ml bottle would be a fine compromise and would offer the consumer a wider choice. This bottle size would contain about 17 ounces of wine. Our dining couple would each have two four-and-a-quarter ounce glasses of wine. They would not need to "finish" the purchased 750 ml bottle. They would be drinking a moderate amount of wine with their meal.
>
> I'm aware the BATF recently rejected a 500 ml bottle for distilled spirits. The critical difference between distilled spirits and wine is how they change in open bottles. Spirits do not noticeably change once opened, and uncorked wine deteriorates quickly. Consumers, who leave a partial bottle for later consumption, may think that the wine went "bad" when they finally drink it. This does no good for that brand nor for wines in general.

Mr. Vierra stated an additional reason, which relates to international commerce. Although the 500 ml size is already permitted for exported wine, as well as for wine restricted to intrastate commerce, Mr. Vierra feels that the lack of an established standard of fill for interstate commerce discourages U.S. glass companies from producing 500 ml wine bottles. Consequently, in order to compete internationally with the 500 ml size, it would be necessary to import bottles from Europe. The expense of that is apparently prohibitive. Mr. Vierra stated:

> Until there is demand for 500 ml bottles, the U.S. glass companies will not produce the product. We can only purchase imported glass from European producers. Again, because of U.S. government constraints, the U.S. glass industry is losing an opportunity.

A final reason in Mr. Vierra's petition relates to moderation in the consumption of alcoholic beverages. As Mr. Vierra expressed it, "The wine industry wants to start speaking of the health benefits of the moderate consumption of wine at the dinner table. [The 500 ml] proposal is part of our message. Moderation is the key."

Anthony Dias Blue, in the nationally published wine article mentioned above, presented additional arguments in favor of the 500 ml wine bottle. Mr. Blue's approach was to rebut some of ATF's reasons for denying previous requests for a 500 ml wine bottle. In response to ATF's argument relating to consumer confusion/deception, Mr. Blue suggested that the typical wine consumer is, in fact, "able to tell the difference between one bottle and another that is one-third bigger." Mr. Blue also argued that there would be no more confusion between the 500 ml and 375 ml sizes than there currently is between the authorized 750 ml and 1 liter bottles. Concerned ATF's argument about "size proliferation," Mr. Blue wrote, "Adding one more size would only bring the number to nine, and two of those are 50 milliliter and 100 milliliter—sizes that are almost never seen."

ATF agrees with the petitioners that there are persuasive arguments that favor approval of a 500 ml standard of fill for wine. Accordingly, ATF proposes to amend 27 CFR 4.37 and 4.73 to provide for a 500 ml standard of fill.

**Public Participation—Written Comments**

ATF requests comments from all interested persons concerning the amendment proposed by this notice. In addition to comments for or against the specific proposal to add a 500 ml size, ATF would like to hear views concerning the impact of this proposal on other standard sizes, particularly the 375 ml size. There are indications that this size, and perhaps other sizes as well, may be under-utilized. If a 500 ml size were adopted, should the 375 ml size be eliminated? What impact, if any, might there be on the 187 ml or other sizes?

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot

be given except as to comments received on or before the closing date.

AFT will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on the proposed regulations should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all the circumstances, whether a public hearing will be held.

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking, because the proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal, if promulgated as a final rule, is not expected to have significant secondary or incidental effects on a substantial number of small entities, or to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12291**

In compliance with Executive Order 12291 of Feb. 17, 1981, the Bureau has determined that this notice of proposed rulemaking is not a major rule, since it will not result in:

(a) An annual effect on the economy of $100 million of more;

(b) A major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) 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 provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking, because no requirement to collect information is proposed.

**Drafting Information**

The principal author of this document is Steve Simon of the Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects in 27 CFR Part 4**

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

**Issuance**

Accordingly, 27 CFR part 4 is proposed to be amended as follows:

## PART 4—LABELING AND ADVERTISING OF WINE

**Paragraph A.** The authority citation for part 4 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. B** Section 4.37(b)(1) is revised to read as follows:

**§ 4.37 Net contents.**

* * * * *

(b) * * *

(1) For the metric standards of fill: 3 liters (101 fl. oz.); 1.5 liters (50.7 fl. oz.); 1 liter (33.8 fl.oz.); 750 ml (25.4 fl.oz.); 500 ml (16.9 fl. oz.); 375 ml (12.7 fl. oz.); 187 ml (6.3 fl. oz.); 100 ml (3.4. fl. oz.); and 50 ml (1.7 fl. oz.)

* * * * *

**Par. C.** Section 4.73(a) is revised to read as follows:

**§ 4.73 Metric standards of fill.**

(a) *Authorized standards of fill.* The standards of fill for wine are the following:

| | |
|---|---|
| 3 liters | 375 milliliters |
| 1.5 liters | 187 milliliters |
| 1 liter | 100 milliliters |
| 750 milliliters | 50 milliliters |
| 500 milliliter | |

* * * * *

Signed: March 2, 1990.

**Stephen E. Higgins,**

*Director.*

Approved: March 26, 1990.

**Peter K. Nunez,**

*Assistant Secretary (Enforcement).*

[FR Doc. 90–7644 Filed 4–3–90; 8:45 am]

BILLING CODE 4810-31-M

## DEPARTMENT OF JUSTICE

### Parole Commission

### 28 CFR Part 2

### Paroling, Recommitting and Supervising Federal Prisoners; Modification of Procedures for Inmates Transferred Pursuant to Treaty

**AGENCY:** United States Parole Commission, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The Parole Commission is proposing an amendment to its current procedures for conducting special transferee hearings for inmates transferred pursuant to treaty who committed their offenses on or after November 1, 1987. The proposed rule relates to the manner in which special transferees should submit their objections to the Postsentence Report and the time in which the Commission must conduct a special transferee hearing. The proposed rule would require a transferee to submit his objections to the Postsentence Report directly to the Commission rather than to the Probation Office as the current rule requires. Additionally, the Commission is proposing a rule change that requires the Commission to conduct a special transferee hearing within 120 days rather than the current 60 days because experience has shown that it is impossible to conduct a special transferee hearing within 60 days from entry into the United States, given the time it takes to prepare a Postsentence Investigation Report, and to prepare the transferee for a hearing.

**DATES:** Comments must be received by June 4, 1990.

**ADDRESSES:** Comments should be sent to the Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD. 20815. ATTN: Richard K. Preston.

**FOR FURTHER INFORMATION CONTACT:** Richard Preston at (301) 492–5959.

**SUPPLEMENTARY INFORMATION:** Under 18 U.S.C. 4106 and 4106A, the Parole Commission has jurisdiction over prisoners and parolees who are transferred from foreign countries pursuant to treaty. With regard to transferees who committed their offenses on or after November 1, 1987, the Commission has recently established special procedures for conducting special transferee hearings wherein the Commission determines a release date and a period and conditions of supervised release. The new

procedures for this class of transferees have been in effect for approximately one year.

After applying the new procedures in a number of cases, certain problems presented themselves. A meeting was held in El Paso, Texas, with representatives from the U.S. Probation Office, the Federal Public Defenders Office for the Western District of Texas, the Bureau of Prisons and the U.S. Parole Commission, to discuss the problems. There was general agreement that the current rule requiring transferees to submit their objections to information contained in the Postsentence Report to the Probation Office was an unnecessary step causing delays. All in attendance at the meeting agreed that the procedures could be streamlined if the objection were sent directly to the Commission. If there were any objections with which the probation office could assist in resolving, the Commission would forward those objections to the Probation Office with a request for additional information. It had been the experience of those involved with the transferee hearings that the vast majority of the objections could not be resolved by the Probation Officer and involved issues that could best be addressed at the special transferee hearing. It was agreed that this modification would help speed up the process with which special transferees were given release dates.

Also discussed at the meeting were the difficulties for the Commission in conducting special transferee hearings within 60 days of the transferee's entry into the United States. The requirement that the hearing be conducted within 60 days was viewed by many to be unrealistic in light of the fact that it took approximately 60 days for the probation office to complete the Postsentence Investigation Report. The preparation of the Postsentence Investigation Report is similar to preparation of Presentence Investigation Reports, for which the Probation Officer must contact several agencies and individuals to determine a transferee's prior record, his educational, employment and personal background. In addition to these investigations, the Probation Officer must summarize the circumstances surrounding the transferee's foreign arrest and conviction and make a recommendation with regard to the applicability of the sentencing guidelines. After the 60 days needed to prepare a Postsentence Investigation Report, the transferee is given 30 days after the disclosure of the report to transmit his objections. Therefore, assuming the Probation Officer was able to conduct his initial interview with the transferee on the date of his entry into the United States, a minimum delay of 90 days exists for the preparation of the Postsentence Report alone.

Additional factors also cause delays. After the Postsentence Report has been prepared and the objections have been submitted, the Commission must determine if further investigation on the part of the Probation Officer is required. Appointment of counsel for indigent transferees must also be arranged. The Commission must then schedule a hearing at the convenience of all parties on the next available hearing docket at the institution. Since the practice of the Commission is to conduct hearing dockets every other month at federal institutions, there is a possibility that an additional 60 days may pass before the next hearing docket. Therefore, the Commission views the proposed rule that special transferee hearings be conducted within 120 days as a reasonable time requirement in that the delays discussed above constituted reasonable delays within the meaning of 18 U.S.C. 4106A(b)(1)(A).

This proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

**List of Subjects in 28 CFR Part 2**

Administrative practice and procedure, parole, prisoners, and probation.

**PART 2—[AMENDED]**

28 CFR part 2 is amended by revising § 2.62 (d) and (e) as follows:

**§ 2.62 Prisoners transferred pursuant to treaty.**

(d) *Opportunity to object.* The transferee (or counsel) shall have thirty calendar days after disclosure of the Postsentence Report to transmit any objections to the report he may have, in writing, to the Commission with a copy to the Probation Officer. The Commission shall review the objections and may request that additional information be submitted by the Probation Officer in the form of an addendum to the Postsentence Report. Any disputes of fact or disputes concerning application of the sentencing guidelines shall be resolved at the Special Transferee Hearing.

(e) *Special Transferee Hearing.* A Special Transferee Hearing shall be conducted within 120 days from the transferee's entry into the United States, or as soon as practicable, following completion of the Postsentence Investigation Report along with any corrections or addendum to the report and appointment of counsel for an indigent transferee.

* * * * *

Dated: March 14, 1990.

**Benjamin F. Baer,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 90-7658 Filed 4-3-90; 8:45 am]

BILLING CODE 4410-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[OPP-300214; FRL-3715-1]**

### Alfalfa; Definitions and Interpretations

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that 40 CFR 180.1(h) be amended by adding a commodity definition to define alfalfa to include alfalfa, birdsfoot trefoil, and sainfoin, and varieties and/or hybrids of these. This proposed amendment, which will define the commodity terms for tolerance purposes, was requested in a petition by the Interregional Research Project No. 4 (IR-4).

**DATES:** Comments, identified by the document control number [OPP-300214], must be received on or before May 4, 1990.

**ADDRESSES:** By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, exlcuding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted this petition to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose that 40 CFR 180.1(h) be amended by adding "alfalfa" to the general category of commodities in column A and defining the general commodity term for tolerance purposes by inserting the corresponding raw agricultural commodities as follows in the specific commodities listing in column B: *Medicago sativa* (alfalfa, lucerne); *Onobrychio viciaefolia* (sainfoin, holy clover, esparcet); and *Lotus corniculatus* (birdsfoot trefoil); and varieties and/or hybrids of these.

Alfalfa, birdsfoot trefoil, and sainfoin are members of the family Leguminosae and subfamily Faboidae. All three crops are distributed all over the world and have been grown for centuries as crops for pasture, hay, and silage. Since each of these plants originated in Western Asia and the Mediterranean areas, they generally have the same climatic requirements.

Insect, disease, and weed control problems among these plants are similar across the country. While a particular pest problem might be more severe in one region than another, the chemicals used for pest control and the pesticide use patterns would be the same.

It is reasonably expected that when equal amounts of pesticide (insecticide, nematocide, fungicide, or herbicide) are applied to any of these three perennial herbaceous legumes for control of a common pest problem, the residue levels, and thus tolerances, should be similar.

The proposed commodity definition for alfalfa is considered to be appropriate since alfalfa, birdsfoot trefoil, and sainfoin, while separate species, all have similar cultural practices, climatic requirements, and common pests which should be controlled with the same pest control measures. The plants are considered to be sufficiently similar to be defined, for tolerance purposes, by the general commodity term "alfalfa."

The revision of 40 CFR 180.1(h) is proposed to add the general category "alfalfa" with the specific agricultural commodities listed as follows: *Medicago sativa* (alfalfa, lucerne); *Onobrychio viciaefolia* (sainfoin, holy clover, esparcet); and *Lotus corniculatus* (birdsfoot trefoil); and varieties and/or hybrids of these. This revision will expand the tolerances and exemptions from the requirement of a tolerance established for residues of pesticide chemicals in or on the general category "alfalfa" to include the specific raw agricultural commodities as listed above. Based on the information considered by the Agency, it is concluded that the regulation established by amending 40 CFR 180.1(h) would protect the public health. Therefore, it is proposed that 40 CFR 180.1(h) be amended as set forth below.

Interested persons are invited to submit written comments on the proposed amendment. Comments must bear a notation indicating the document control number, [OPP-300214]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

**List of Subjects in 40 CFR Part 180**

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

Dated: March 16, 1990.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

**PART 180—[AMENDED]**

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

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.1(h) is amended by adding and alphabetically inserting a commodity definition for alfalfa, to read as follows:

**§ 180.1 Definition and interpretations.**

* * * * *

(h) * * *

| A | B |
|---|---|
| Alfalfa | *Medicago sativa*, (alfalfa, lucerne); *Onobrychio viciaefolia* (sainfoin, holy clover, esparcet); and *Lotus corniculatus* (birdsfoot trefoil); and varieties and/or hybrids of these. |
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[FR Doc. 90-7642 Filed 4-3-90; 8:45 am]

BILLING CODE 6560-50-D

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 61, 65, and 69

**[CC Docket No. 87-313; FCC 90-89]**

**RIN 3060-AE36**

### Policy and Rules Concerning Rates for Dominant Carriers

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rules.

**SUMMARY:** In 1989, the Commission issued specific proposed changes in its rules that would replace its current rate of return regulatory model with one that directly limits local exchange carriers' rates by means of price caps. The majority of the proposed rule amendments relate to the Commission's tariff review process. The Commission now seeks comment on a few modifications to the proposal it made in 1989, and invites additional comment on several specific issues.

**DATES:** Comments must be submitted on or before April 27, 1990, and reply comments on or before May 29, 1990.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Mary Brown, Common Carrier Bureau, (202) 632-5550.

**SUPPLEMENTARY INFORMATION:**

*Number of Copies.* In addition to the number of copies required by 47 CFR 1.419, interested parties are requested to file an additional ten copies of their pleadings, addressed to the Price Cap Task Force, Federal Communications Commission, 1919 M Street, room 518, Washington, DC 20554.

**Background**

Notice of Proposed Rulemaking. In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87–313. *Adopted:* August 4, 1987. *Released:* August 21, 1987. 52 FR 33962 (Sept. 9, 1987). By the Commission. Further Notice of Proposed Rulemaking. In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87–313. *Adopted:* May 12, 1988. *Released:* May 23, 1988. 53 FR 22356 (June 15, 1988). By the Commission. Second Further Notice of Proposed Rulemaking, In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87–313. *Adopted:* March 16, 1989. *Released:* April 17, 1989. 54 FR 19846 (May 8, 1989).

**Summary of Supplemental Notice of Proposed Rulemaking**

This is a summary of the Commission's *Supplemental Notice of Proposed Rulemaking* in *In the Matter of Policy and Rules Concerning Rates for Dominant Carriers,* CC Docket No. 87–313, FCC 90–89, Adopted March 8, 1990, and Released March 12, 1990.

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 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, suite 140, Washington, DC 20037.

*I. In General*

1. The price cap plan we propose for regulating local exchange carriers (LECs) builds upon the proposal set out in a Further Notice of Proposed Rulemaking released May 23, 1988 (Further Notice) that was later refined in a Second Further Notice of Proposed Rulemaking released April 17, 1989 (Second Further Notice). This summary of the Supplemental Notice of Proposed Rulemaking (Supplemental Notice) highlights the few modifications to the LEC price cap plan we now propose to make, and summarizes those issues for which additional comment is sought.

2. The proposed LEC price cap plan set out in the Second Further Notice is designed to replicate better than traditional rate of return regulation the incentives to efficiency that characterize competitive markets. The essential premise underlying the proposal is that by limiting the rates carriers may charge, rather than their rates of return, the regulatory system can drive carriers to avoid unnecessary costs, invest in efficiency enhancing technology, and employ innovative service approaches in order to earn levels of return above those available under rate of return regulation.

*II. The Mechanics of the Proposed Price Cap Plan*

A. The Productivity Offset

3. The proposal for incentive regulation of the LECs described in the Second Further Notice depends primarily on a cap, or ceiling, on LEC prices. The cap would be established by reference to a formula that reflects (a) changes in the cost of factors of production through use of the Gross National Product Price Index (GNP–PI), (b) a 2.5 percent productivity offset representing the historical difference between LEC industry productivity improvements and productivity gains in the economy as a whole, (c) a 0.5 percent Consumer Productivity Dividend (that results in overall rate reductions in excess of historical productivity performance), and (d) certain specific cost changes beyond the carrier's control (known as exogenous costs).

4. The Commission's investigation of productivity led it to conclude, based on long term historical Bell System data, that the best estimate of potential annual productivity gain for LECs is 2.5 percent over and above the productivity of the economy as a whole. In an attempt to explore further the reliability of this estimate of LEC productivity, we include in the Supplemental Notice our critique of various studies of post-divestiture LEC productivity submitted in response to the Second Further Notice, and present two new staff studies that provide additional evidence of measures of LEC productivity in the post-divestiture era. We seek comment on these studies, as well as on how to harmonize their results with each other, and with the productivity record as a whole.

B. The Automatic Stabilizer

5. To remedy concerns that individual LECs may show some statistical variability from the average productivity offset calculated for the industry as a whole, the Second Further Notice proposed a device known as the automatic stabilizer that was intended to adjust price cap levels if LEC earnings became too high or too low. We tentatively propose modifications to the automatic stabilizer that the Commission described in the Second Further Notice.

6. First, we propose to employ our section 205 authority to prescribe a zone of earnings reasonableness. The zone of reasonableness we propose would be bounded at the low end by a lower "formula adjustment" earnings level for price cap carriers. If a carrier's earnings for a historical base year fail to achieve the lower "formula adjustment" mark for a historical base year data, the carrier's price caps would be adjusted upward to provide it an opportunity to earn a return at least equivalent to the lower limit. At the top end of the zone, earnings above an upper "formula adjustment" level would also trigger a downward adjustment in a carrier's price cap indexes, so that, based on historical base year data, the carrier would have the opportunity to earn at the upper "formula adjustment" mark.

7. We tentatively find that prescription of an earnings zone of reasonableness strengthens the price cap proposal both from the ratepayers' and the LEC's point of view. This represents an important change in the legal theory on which our price cap plan is based. Specifically, we now propose to prescribe the stabilizer under section 205 of the Act, rather than simply revising our section 204 tariff review standards to create a "no-suspension" zone. Unlike the plan set forth in the Second Further Notice, the price cap system we are proposing today is not limited to changes in our tariff review mechanisms.

8. In addition to selecting a lower "formula adjustment" return level triggering an upward adjustment in price cap indexes, and an upper "formula adjustment" return level that would trigger a downward adjustment to price cap indexes, we propose to select an earnings level below which the carrier could retain all its earnings and above which the carrier would share earnings with ratepayers. The mechanics of such sharing would require that as the historical level of earnings increases, a carrier would be required to share an increasing amount with ratepayers. We solicit comment on the use of a sharing device that employs the following characteristics: (1) The selection of a level of return in a base year that triggers the sharing mechanism; (2) the decision to require carriers to share earnings with ratepayers when base year returns are at or above a "trigger level"; and (3) the decision to require carriers to taper the sharing mechanism

so that carriers retain less of a percentage of returns the higher their base year earnings.

9. At the top of the sharing mechanism, we propose that the final sharing increment or "step" continue to provide incentives for carriers to become more productive. As a means of providing such incentive, we request comment on the issue of permitting LECs to retain some portion of their earnings at the highest increment or "step". Alternatively, we propose that beyond the top step, ratepayers receive 100 percent of any additional carrier earnings and seek comment on whether this type of mechanism property balances the incentive objectives and public interest objectives we seek to create with the price cap rules.

10. Finally, we propose to expand our ongoing part 65 prescription process, to represcribe a target rate of return under the existing regulatory system, to include prescription of a stabilizer zone under the proposed price cap system and the sharing device. We tentatively find that the part 65 "paper hearing" process is best suited, procedurally and substantively, to defining an earnings zone that will reflect the risks faced by price cap carriers and to selecting the point at which sharing begins, the number of sharing increments or steps leading up to the top of the sharing taper, and the percentage of earnings to be shared at each step leading to the top of the taper. We direct the Common Carrier Bureau to issue an order expanding the issues in the part 65 proceeding to include prescription of a price cap stabilizer and sharing device.

C. Timing of Implementation and Use of Existing Rates

11. We propose that LECs subject to price cap regulation file tariffs to be effective January 1, 1991, and thereafter to file annual price cap tariffs effective July 1. We tentatively conclude that the first price cap filing should be for an initial six-month period, so that price cap carriers will revert to an annual filing each April with price cap tariffs effective July 1.

12. We note that deferral of the proposed implementation date by six months requires us to consider the effect of the delay on the reasonableness of relying on existing rates, the relationship of those existing rates to the ongoing rate of return represcription proceeding, and the future scheduling of price cap filings. We tentatively conclude that the rates in effect on July 1, 1990, would be, in general, a reasonable starting point, and we propose to initiate price cap indexes as of that date. We also propose to adjust price caps on the day they are implemented in the event that the represcription process yields a target rate of return different from the currently authorized 12 percent or in the event rates are adjusted during 1990 to correct for under- or over-earnings by carriers subject to price cap regulation.

D. Rate Flexibility

13. In the Supplemental Notice, we also seek additional comment on rate flexibility issues. While many have criticized the extent of pricing flexibility for LECs in our proposal, few have presented specific alternatives to address what they perceive to be a major flaw in the price cap system. We seek comment on this issue to see if a more optimum solution exists.

*IV. Paperwork Reduction Analysis*

14. On June 14, 1988, after the release of the Further Notice in this proceeding, the Commission requested that the Office of Management and Budget (OMB) review the proposed information collection requirements for compliance with the Paperwork Reduction Act of 1980. On August 15, 1988, OMB commented on the Commission's proposed information collection requirements. OMB stated that the Further Notice failed to demonstrate the practical utility of some of the reporting requirements proposed in the Commission's request, and found that the information collections are not the minimum necessary to meet the objectives of the proposed rules. In commenting on the Commission's request, OMB listed a series of concerns that it asked the Commission to address. Those concerns have been addressed in the context of the Commission's Final Order adopting and implementing price cap regulation for AT&T, and in the context of the Commission's Second Further Notice proposing to implement price cap regulation for the LECs.

15. Although incentive regulation for the LECs has been adopted by the Commission, we are not at this time promulgating final rules to implement incentive regulation for the LECs. This Order does, however, propose a modified set of regulations for implementing incentive regulation for the LECs. In connection with this Supplemental Notice with respect to the LECs, we renew our request for review of Paperwork Reduction Act requirements in light of the proposals made in this Notice. The proposed rules for LECs contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, and found to decrease the information collection burden on the public. This proposed reduction in the information collection burden is subject to approval by OMB as prescribed by the Paperwork Reduction Act.

*V. Regulatory Flexibility Act Analysis*

16. We certify that the Regulatory Flexibility Act is not applicable to the rule changes we are proposing for the LECs in this proceeding. In accordance with the provisions of section 605 of that Act, a copy of this certification has been sent to the Chief Counsel for Advocacy of the Small Business Administration.

17. As part of its analysis of the proposal described in the Second Further Notice, however, the Commission considered the impact of the proposal on small telephone companies, *i.e.*, those serving 50,000 or fewer access lines. As a result of our decision to make price cap regulation elective for depooled cost companies below the Tier 1 level, no small carrier will be forced to change the method by which it is regulated. Small companies that currently file their own cost-based access tariffs are free to remain under rate of return if they decide the rate of return is better suited to their circumstances than is price caps. Small carriers participating in the NECA pools, and for whom NECA files access tariffs, will not be forced to leave the pools as a result of the price cap rules we are proposing in this Notice. In addition, nothing in the price cap proposal would discontinue or impair the variety of programs we have established to provide support to small carriers. Those programs, such as our High Cost Fund and long term support mechanisms, continue intact. Furthermore, average schedule companies that are or become affiliated with cost companies that are regulated under price caps would not need to relinquish average schedule, rate of return regulation. We have also proposed that, for companies that have not yet begun conversion to equal access, conversion costs be treated as exogenous costs under the price cap formula. This proposal ensures that small carriers, who are the least likely to have begun equal access conversion, can flow through these costs to their rates should they elect price caps. These proposals, when viewed in their totality, permit small, depooled cost companies to take advantage of the benefits of price cap regulation at their option, while ensuring that the status quo is maintained for small carriers that do not participate in price cap regulation.

*VI. Ex Parte Requirements.*

18. For purposes of this non-restricted notice and comment rulemaking proceeding concerning LECs, members

of the public are advised that *ex parte* presentations are permitted except during the "Sunshine Agenda" period. See generally § 1.1206(a) of this Commission's Rules. The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when this Commission (1) releases the text of a decision or Order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. See § 1.1202(f) of this Commission's Rules. During the Sunshine Agenda period, no presentations *ex parte* or otherwise, are permitted unless specifically requested by this Commission or Commission staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. See § 1.1203 of this Commission's Rules.

19. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decisionmaking personnel which (1) if written, is not served on the parties to the proceeding; or (2) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. See § 1.1202(b) of this Commission's Rules. Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of that presentation to this Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in the person's previously filed written comments, memoranda, or filings in this proceeding must provide one the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and states on its face that the Secretary has been served, and also states by docket number the proceeding to which it relates. *See* § 1.1206 of this Commission's Rules.

20. All relevant and timely comments and reply comments will be considered by this Commission. In reaching our decision, this Commission may take into account information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of this Commission's reliance on such information is noted in the Order.

*VII. Ordering Clauses*

21. Accordingly, It is ordered that, pursuant to sections 4(i), 4(j), 201–205, 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 303(r), 403, and section 553 of title 5, United States Code, Notice Is Hereby Given of proposed amendments to part 61, part 65, and part 69, and §§ 61.3, 61.38, 61.39, 61.41, 61.42, 61.43, 61.44, 61.45, 61.48, 61.49, 61.58, 65.1, 65.600, 65.701, 65.703, 69.1, 69.3, 69.101, 69.105, 69.111, 69.113, 69.114, 69.205, 69.301, 69.302, 69.303, 69.304, 69.305, 69.306, 69.307, 69.308, 69.309, 69.310, 69.401, 69.402, 69.403, 69.404, 69.405, 69.406, 69.407, 69.408, 69.409, 69.410 and 69.411 of this Commission's Rules, 47 CFR part 61, part 65, and part 69, and §§ 61.3, 61.38, 61.39, 61.41, 61.42, 61.43, 61.44, 61.45, 61.48, 61.49, 61.58, 65.1, 65.600, 65.701, 65.703, 69.1, 69.3, 69.101, 69.105, 69.111, 69.113, 69.114, 69.205, 69.301, 69.302, 69.303, 69.304, 69.305, 69.306, 69.307, 69.308, 69.309, 69.310, 69.401, 69.402, 69.403, 69.404, 69.405, 69.406, 69.407, 69.408, 69.409, 69.410, and 69.411, in accordance with the proposals, discussion, and statement of issues in this Supplemental Notice, and that comment is sought regarding such proposals, discussion, and statement of issues.

22. It is further ordered that, in accordance with the provisions of § 1.419(b) of this Commission's Rules, 47 CFR 1.419(b), an original and five copies of all comments, replies, pleadings, briefs, and other documents filed in the proceeding shall be furnished to this Commission. In addition, parties should file ten copies of any such pleadings with the Price Cap Task Force, Common Carrier Bureau, room 518, 1919 M Street NW., Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with this Commission's copy contractor, International Transcription Services, Inc., suite 140, 2100 M Street NW., Washington, DC 20037. Members of the public who wish to express their views by participating informally may do so by submitting one or more copies of their comments without regard to form (so long as the docket number is clearly stated at the heading). Copies of all filings will be available for public inspection during regular business hours in this Commission's Docket Reference Room (room 239) at our headquarters at 1919 M Street NW., Washington, DC.

23. It is further ordered that comments on this Supplemental Notice of Proposed Rulemaking shall be due not later than April 27, 1990, and that reply comments shall be due not later than May 29, 1990.

**List of Subjects**

*37 CFR Part 61*

Communications common carriers.

*47 CFR Part 65*

Administrative practice and procedure.

*47 CFR Part 69*

Communications common carriers.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

Title 47 of the CFR, parts 61, 65, and 69 are proposed to be amended as follows:

## PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

**Authority:** Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61. 3 is amended by revising paragraphs (u) and (w) to read as follows:

**§ 61.3 Definitions.**

* * * * *

(u) *Price Cap Index* (PCI). An index of costs facing carriers subject to price cap regulation, which index is calculated for each basket pursuant to §§ 61.44 or 61.45.

* * * * *

(w) *Price cap tariff.* Any tariff filing involving a service that is within a price cap basket, or that requires calculations pursuant to §§ 61.44, 61.45, 61,46, or 61.47.

* * * * *

3. Section 61.38(a) is amended by revising the last sentence to read as follows:

**§ 61.38 Supporting information to be submitted with letters of transmittal.**

(a) * * * This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in §§ 61.42(a), (b), (d), (e), and (g), which filings are submitted by carriers subject to price cap regulation.

* * * * *

4. Section 61.39(a) is amended by adding the following new sentence at its end to read as follows:

**§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after January 1, 1989, by local exchange carriers serving 50,000 or fewer access lines that are described as subset 3 carrier in § 69.602.**

(a) * * * This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in §§ 61.42(d), (e), and (g), which filings are submitted by carriers subject to price cap regulation.

* * * * *

5. Section 61.41 is revised to read as follows:

**§ 61.41 Price cap requirements generally.**

(a) Sections 61.42 through 61.49 shall apply as follows:

(1) To dominant interexchange carriers, as specified by Commission order;

(2) To Tier 1 local exchange carriers, as defined by Commission order, which are not participants in any Association tariff effective January 1, 1991, and to all local exchange carriers, other than average schedule companies, that are affiliated with such carriers; and

(3) On an elective basis, to local exchange carriers, other than those specified in paragraph (a)((2) of this section, that are neither participants in any Association tariff effective January 1, 1991, nor affiliated with any such participants, except that affiliation with average schedule companies shall not bar a carrier from electing price cap regulation provided the carrier is otherwise eligible.

(b) If a telephone company, or any one of a group of affiliated telephone companies, files a price cap tariff in one study area, that telephone company and its affiliates, except its average schedule affiliates, must file price cap tariffs in all their study areas. No telephone company that files a price cap tariff may participate in an Association tariff.

6. Section 61.42 is amended by redesignating paragraph (d) as paragraph (g) and revising part of the first sentence thereof, and by adding new paragraphs (d), (e), and (f) to read as follows:

**§ 61.42 Price cap baskets and service categories.**

* * * * *

(d) Each local exchange carrier subject to price cap regulation shall establish three baskets as follows:

(1) A basket for the common line interstate access elements as described in § 69.105 of this chapter;

(2) A basket for traffic sensitive switched interstate access elements; and

(3) A basket for interstate services other than services described in paragraphs (d)(1) or (d)(2) of this section.

(e)(1) The traffic sensitive switched access basket shall contain such services as the Commission shall permit or require, including the following service categories: (i) local switching as described in § 69.106; (ii) information, as described in § 69.109; and (iii) transport, as described in § 69.111 of this chapter.

(2) The basket for interstate services other than interstate switched access services shall contain such services as the Commission shall permit or require, including special access, as described in § 69.113 of this chapter, and non-access services.

(f) Each local exchange carrier subject to price cap regulation shall exclude the following offerings from their price cap baskets:

(1) Special construction services;

(2) Services offered on an individual case basis (ICB).

(g) New services, other than those within the scope of paragraphs (c) and (f) of this section, * * *

7. Section 61.43 is amended by revising the first sentence to read as follows:

**§ 61.43 Annual price cap filings required.**

Carriers subject to price cap regulation shall submit annual price cap tariff filings that propose rates for the upcoming year, that make appropriate adjustments to their PCI, API, and SBI values pursuant to §§ 61.44 through 61.47, and that incorporate the costs and rates of new services into the PCI, API, or SBI calculations pursuant to §§ 61.44(g), 61.45(g), 61.46(b), and 61.47 (b) and (c). * * *

8. Section 61.44 is amended by revising the heading and first sentence of paragraph (a) and the introductory text of paragraph (b) to read as follows:

**§ 61.44 Adjustments to the PCI for Dominant Interexchange Carriers.**

(a) Dominant interchange carriers subject to price cap regulation shall file adjustments to the PCI for each basket as part of the annual price cap tariff filing, and shall maintain updated PCIs to reflect the effect of mid-year access and exogenous cost change. * * *

(b) Subject to paragraph (d) of this section, adjustments to each PCI of dominant interexchange carriers subject to price cap regulation shall be made pursuant to the following formula: * * *

* * * * *

9. New section 61.45 is added to read as follows:

**§ 61.45 Adjustments to the PCI for Local Exchange Carriers.**

(a) Local exchange carriers subject to price cap regulation shall file adjsutments to the PCI for each basket as part of the annual price cap tariff filing, and shall maintain updated PCIs to reflect the effect of mid-year exogenous cost changes.

(b) Subject to paragraphs (e) and (f) of this section, adjustments to local exchange carrier PCIs for the baskets designated in §§ 61.42(d) (2) and (3) shall be made pursuant to the following formula:

$$PCI_t = PCI_{t-1}[1 + w(GNP\text{-}PI - X) + \Delta Z/R + \Delta Y/R]$$

where

GNP-PI = the percentage change in the GNP-PI between the quarter ending six months prior to the effective date of the new annual tariff and the corresponding quarter of the previous year,

X = productivity factor of 3.0 percent,

$\Delta Y$ = (new access rate—access rate at the time the PCI was updated to $PCI_{t-1}$) × (base period demand),

$\Delta Z$ = the dollar effect of current regulatory changes when compared to the regulations in effect at the time the PCI was updated to $PCI_{t-1}$, measured at base period level of operations,

R = base period quantities for each rate element "i", multiplied by the price for each rate element "i" at the time the PCI was updated to $PCI_{t-1}$,

$w = R + \Delta Z$, all divided by R,

$PCI_t$ = the new PCI value, and

$PCI_{t-1}$ = the immediately preceding PCI value.

(c) Subject to paragraphs (e) and (f) of this section, adjustments local exchange carrier PCIs for the basket designated in § 61.42(d)(1) shall be made pursuant to the following formula:

$$PCI_t = PCI_{t-1}[1 + w[(GNP\text{-}PI - X) + (g/2)(GNP\text{-}PI\text{-}X\text{-}1)]/(1+g) + \Delta Z/R]$$

Where

GNP-PI = the percentage change in the GNP-PI between the quarter ending six months prior to the effective date of the new annual tariff and the corresponding quarter of the previous year,

X = productivity factor of 3.0 percent,

g = the ratio of minutes of use per access line during the base period, to minutes of use per access line during the previous base period, minus 1,

$\Delta Z$ = the dollar effect of current regulatory changes when compared to the regulations in effect at the time the PCI was updated to $PCI_{t-1}$, measured at base period level of operations,

R = base period quantities for each rate element "i", multiplied by the price for each rate element "i" at the time the PCI was updated to $PCI_{t-1}$,

$w = R + \Delta Z$, all divided by R,

$PCI_t$ = the new PCI value, and

$PCI_{t-1}$ = the immediately preceeding PCI value.

(d) The exogenous cost changes represented by the term "ΔZ" in the formulas detailed in paragraphs (b) and (c) of this section, shall be limited to those cost changes that the Commission shall permit or require, and include those caused by (1) the completion of the amortization of depreciation reserve deficiencies; (2) changes in the Uniform System of Accounts; (3) changes in the Separations Manual; (4) changes to the level of obligation associated with the Long Term Support Fund and the Transitional Support Fund described in § 69.612 of this chapter; (5) the reallocation of investment from regulated to nonregulated activities pursuant to § 64.901 of this chapter; and (6) such tax law changes and other extraordinary exogenous cost changes as the Commission shall permit or require. These exogenous cost changes shall be apportioned on a cost-causative basis between price cap services as a group, and excluded services as a group. Exogenous cost changes thus attributed to price cap services shall be further apportioned on a cost-causative basis among the price cap baskets.

(e) The "w(GNP-PI−X)/100" component of the PCI formula contained in paragraph (b) of this section, and the "w[GNP-PI−X)+(g/2)[GNP-PI−X−1]]/(1+g)" component of the PCI formula contained in paragraph (c) shall be employed only in the adjustment made in connection with the annual price cap filing.

(f)(1) In the event that a LEC subject to price cap regulation experiences a rate of return during any base period representing a return above the price cap upper formula adjustment mark prescribed by the Commission, the values assigned to the "$PCI_{t-1}$" component of that LEC's PCIs shall be adjusted downward to the levels that would have yielded a base period rate of return equal to that formula adjustment mark and (2) in the event that a LEC subject to price cap regulation experiences a rate of return during any base period representing a return below the lower formula adjustment mark prescribed by the Commission, the values assigned to the "$PCI_{t-1}$" component of that LEC's PCIs shall be adjusted upward to the levels that would have yielded a base period rate of return equal to that lower mark. The adjustment shall occur as part of the annual price cap filing immediately following the base period in which the LEC's return was above the upper mark or below the lower mark.

(g) The exogenous costs caused by new services subject to price cap regulation must be included in the appropriate PCI calculations under paragraphs (b) or (c) of this section beginning at the first annual price cap tariff filing following completion of the base period in which they are introduced.

(h) In the event that a price cap tariff becomes effective, which tariff results in an API value (calculated pursuant to § 61.46) that exceeds the currently applicable PCI value, the PCI value shall be adjusted upward to equal the API value.

10. Section 61.48 is amended by adding paragraph (c), (d), and (e) to read as follows:

**§ 61.48 Transition rules for price cap formula calculations.**

* * * * *

(c) Local exchange carriers subject to price cap regulation shall file initial price cap tariffs not later than October 3, 1990, to be effective January 1, 1991.

(d) In connection with the initial price cap filing described in paragraph (c) of this section, each PCI, API, and SBI shall be assigned an intial value prior to adjustment of 100, corresponding to the costs and rates in effect as of July 1, 1990.

(e) In connection with the initial price cap filing described in paragraph (c) of this section, initial PCI calculations shall be made without adjustment for any changes in inflation or productivity. Annual price cap filings incorporating the full values of the GNP–PI and productivity offsets will commence April 2, 1991, with a scheduled effective date of July 1, 1991.

11. Section 61.49 is amended by revising paragraph (a) and the last sentence of paragraph (g) to read as follows:

**§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.**

(a) Each price cap tariff filing must be accompanied by supporting materials sufficient to calculate required adjustments to each PCI, API, and SBI pursuant to the methodologies provided in §§ 61.44, 61.45, 61.46, and 61.47.

* * * * *

(g) * * * Each such tariff filing must also be accompanied by data sufficient to make the API and PCI calculations required by §§ 61.46(b), 61.44(g), and 61.45(g), and, as necessary, to make the SBI calculations provided in §§ 61.47 (b) and (c).

12. Section 61.58 is amended by revising paragraphs (c)(1), (c)(5), and (c)(6) to read as follows:

**§ 61.58 Notice requirements.**

* * * * *

(c) * * *

(1) For annual adjustments to the PCI, API, and SBI values under §§ 61.44, 61.46, and 61.47, respectively, dominant interexchange carrier filings must be made on at least 45 days' notice. For annual adjustments to the PCI, API, and SBI values under §§ 61.45, 61.46, and 61.47, respectively, local exchange carrier tariff filings must be made on not less than 90 days' notice.

* * * * *

(5) Tariff filings involving a change in rate structure of a service included in a basket listed in § 61.42(a) or § 61.42(d), or the introduction of a new service within the scope of § 61.42(g), must be made on at least 45 days' notice.

(6) The required notice for tariff filings involving services included in § 61.42(c) or § 61.42(f), or involving charges to tariff regulations, shall be that required in connection with such filings by dominant carriers that are not subject to price cap regulation.

## PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

1. The authority citation for part 65 continues to read as follows:

**Authority:** Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 65.1 is revised to read as follows:

**§ 65.1 Application of part 65.**

This part establishes procedures and methodologies for Commission prescription of interstate rates of return. This part shall apply to those interstate services and carriers as the Commission shall designate by order. This part shall not apply to dominant interexchange carriers subject to §§ 61.41 through 61.49, except as set forth in §§ 65.600(c), 65.701(c) and 65.703(g). Local exchange carriers subject to §§ 61.41 through 61.49 are exempt from the requirements of this part with the following exceptions: (a) Carriers that meet the requirements of § 65.200(b) shall be subject to the filing requirements of subpart C of this part; (b) carriers subject to §§ 61.41 through 61.49 shall employ the rate of return value calculated for the LEC industry in complying with any applicable rules under parts 36 and 69 that require a return component; and (c) carriers subject to §§ 61.41 through 61.49 shall be subject to §§ 65.600(d), 65.701(c), and 65.703(g).

**§ 65.600 [Amended]**

3. Section 65.600 is amended by revising paragraph (b) and adding new paragraph (d), to read as follows:

* * * * *

(b) Each local exchange carrier or group affiliated carriers which is not subject to §§ 61.41 through 61.49 of this chapter and which has filed individual access tariffs during the preceding enforcement period shall file with the Commission within three (3) months after the end of each calendar quarter, a quarterly rate of return monitoring report. Each report shall contain two parts. The first part shall contain rate of return information on a cumulative basis form the start of the enforcement period through the end of the quarter being reported. The second part shall contain similar information for the most recent quarter. The final quarterly monitoring report for the entire enforcement period shall be considered the enforcement period report. Reports shall be filed on the appropriate report form prescribed by the Commission (see § 1.795 of this chapter) and shall provide full and specific answers to all questions propounded and information requested in the currently effective report form. The number of copies to be filed shall be specified in the applicable report form. At least one copy of the report shall be signed on the signature page by the responsible officer. A copy of each report shall be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection. Final adjustments to the enforcement period report shall be made by September 30 of the year following the enforcement period to ensure that any refunds can be properly reflected in an annual access filing. For local exchange carriers subject to §§ 61.41 through 61.49 of this chapter, final adjustments to the final enforcement period report covering the period ending December 31, 1990, shall be made no later than October 1, 1991.

* * * * *

(d) Each local exchange carrier or group of affiliated carriers subject to §§ 61.41 through 61.49 of this chapter shall file with the Commission within three (3) months after the end of each calendar year a report of its total interstate access rate of return for that year. Such filings shall include a report of the total revenues, total expenses and taxes, operating income, and the rate base. At least one copy of the report shall be signed on the signature page by the responsible officer. A copy of each report shall be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection.

4. Section 65.701 is amended by adding paragraph (d) to read as follows;

**§ 65.701 Period of review.**

* * * * *

(d) Notwithstanding other provisions in this subpart, the final period of review for any local exchange carrier subject to §§ 61.41 through 61.49 of this chapter shall end on December 31, 1990.

5. Section 65.703 is amended by revising the first sentence of paragraph (g) and by adding new paragraph (h) to read as follows:

**§ 65.703 Refunds.**

* * * * *

(g) For interexchange carriers subject to §§ 61.41 through 61.49 of this chapter, refund obligations incurred prior to the date their tariffs filed pursuant to §§ 61.41 through 61.49 of this chapter take effect for the first time shall be effectuated by an adjustment to the applicable Actual Price Index, Service Band Index, and Price Cap Indes (as defined in § 61.3 of this chapter). * * *

(h) For each local exchange carrier subject to §§ 61.41 through 61.49 of this chapter, refund obligations incurred prior to the end of its final period of review shall be effectuated by an adjustment to the applicable Actual Price Index, Service Band Index, and Price Cap Index (as defined in § 61.3 of this chapter). Carriers making an adjustment to effectuate any outstanding refund requirements from their final enforcement period shall make such adjustments no later than the next scheduled annual price cap adjustment tariff filing following the submission of the final enforcement report. The adjustment shall complete the required refund within 12 months. Upon completion of the required refund, the Actual Price Index, the Service Band Index, or the Price Cap Index shall be adjusted to remove the effect of the adjustment.

## PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

**Authority:** Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403, unless otherwise noted.

2. Section 69.1 is amended by adding paragraph (c), as follows:

**§ 69.1 Application of access charges.**

* * * * *

(c) The following provisions of this part shall apply to telephone companies subject to price cap regulation only to the extent that they are necessary to develop the nationwide average carrier common line charge: §§ 69.3(f), 69.103(b), 69.105(b)(4), 69.105(b)(5), 69.106(b), 69.107(b), 69.107(c), 69.109(b), 69.111(c), 69.112(a), 69.112(b)(2), 69.112(b)(3), 69.112(d)(2), 69.112(d)(3), 69.11,4(b), 69.114(d), 69.205(e), 69.301 through 69.310, and 69.401 through 69.412.

3. Section 69.3 is amended by revising by revising paragraphs (a) (e)(4), and by adding a new paragraph (h) as follows:

**§ 69.3 Filing of access service tariffs.**

(a) Except as provided in paragraphs (f) and (g) of this section, a tariff for access service shall be filed with this Commission for an annual period. Such tariffs shall be filed on a minimum of 90 days' notice with a scheduled effective date of July 1, Such tariff filings shall be limited to rate level changes.

* * * * *

(e) * * *

(4) Except for charges subject to price cap regulation as that term is defined in § 61.3(v) of this chapter, any charge in such a tariff that is not an association charge must be computed to reflect the combined investment and expenses of all companies that participate in such a charge;

* * * * *

(h) Local exchange carriers subject to price cap regulation as that term is defined in § 61.3(v) of this chapter, shall file with this Commission a price cap tariff for access service for an annual period. Subject to § 61.48, such tariffs shall be filed to provide a minimum of 90 days' notice with a schedule effective date of July 1. Such tariff filings shall be limited to changes in the Price Cap Indexes, rate level changes (with corresponding adjustments to the affected Actual Price Indexes and Service Band Indexes), and the incorporation of new services into the affected indexes as required by § 61.49 of this chapter.

4. Section 69.101 is revised to read as follows:

**§ 69.101 General.**

Except as provided in § 69.1 and subpart C of this part, charges for each access element shall be computed and assessed as provided in this subpart.

5. Section 69.105 is amended by adding paragraphs (b)(7) and (b)(8), as follows:

**69.105 Carrier Common Line.**

* * * * *

(b) * * *

(7) The Carrier Common Line charges of telephone companies that are subject

to price cap regulation as that term is defined in § 61.3(v) of this chapter, shall be computed at the level of Carrier Common Line access element aggregation selected by such telephone companies pursuant to § 69.3(e)(7). For each such Carrier Common Line access element tariff, the premium originating Carrier Common Line charge shall be one cent per minute. The premium terminating Carrier Common Line charge shall be set at a level that, when aggregated with the one cent originating charge, shall not cause the Actual Price Index for the common line basket to exceed the Price Cap Index for that basket.

(8) If the calculations described in paragraph (b)(7) of this section result in a per minute charge on premium terminating minutes that is less than one cent, the originating and terminating charges shall be equal, and set at a level that does not cause the API for the common line basket to exceed the PCI.

* * * * *

6. Section 69.111(a) is revised to read as follows:

**§ 69.111 Common transport.**

(a) A charge that is expressed in dollars and cents per access minute shall be assessed upon all interexchange carriers that use switching or transmission facilities that are apportioned to the Common Transport element for purposes of apportioning investment, or that are equivalent to those facilities for companies subject to price cap regulation as that term is defined in § 61.3(v) of this chapter.

* * * * *

7. Section 69.113(c) is revised to read as follows:

**§ 69.113 Non-premium charges for MTS–WATS equivalent services.**

* * * * *

(c) For telephone companies that are not price cap carriers, the non-premium charge for the Local Switching element shall be computed by multiplying a hypothetical premium charge for such element by .45. The hypothetical premium charge for such element shall be computed by dividing the annual revenue requirement for each element by the sum of the projected access minutes for such element for such period and a number that is computed by multiplying the projected non-premium minutes for such element for such period by .45. For telephone companies that are price cap carriers, the non-premium charge for the Local Switching element shall be computed by multiplying the premium charge for such element by .45. Through December 31, 1992, the non-premium charge shall be computed by multiplying the LS1 charge for such element by .45.

* * * * *

8. Section 69.114(a) is revised to read as follows:

**§ 69.114(a) Special access.**

(a) Appropriate statements shall be established for the use of equipment or facilities that are assigned to the Special Access element for purposes of apportioning net investment, or that are equivalent to such equipment or facilities for companies subject to price cap regulation as that term is defined in § 61.3(v) of this chapter.

* * * * *

9. Section 69.205(c) is revised to read as follows:

**§ 69.205(c) Transitional premium charges.**

* * * * *

(c) Except for telephone companies subject to price cap regulation, as that term is defined in § 61.3(v) of this chapter, the charge for an LS2 premium access minute shall be computed by dividing the premium Local Switching revenue requirement by the sum of the projected LS2 premium access minutes and a number that is computer by multiplying the projected LS1 premium access minutes by the applicable LS1 transition factor. For all telephone companies, the charge for an LS1 premium access minute shall be computed by multiplying the charge for an LS2 premium minute by the applicable LS1 transition factor. For telephone companies that are not price cap carriers, the premium Local Switching revenue requirement shall be computed by subtracting the projected revenue from non-premium charges attributable to the Local Switching element from the revenue requirement for each element.

* * * * *

10. Section 69.301(a) is revised to read as follows:

**§ 69.301 General.**

(a) For telephone companies that are not subject to price cap regulation as that term is defined in § 61.3(v) of this chapter, for purposes of computing annual revenue requirements for access elements, net investment as defined in § 69.2(z) shall be apportioned among the interexchange category, the billing and collection category, and access elements as provided in this Subpart. Expenses shall be apportioned as provided in subpart E of this part. For telephone companies that are price cap carriers, for purposes of calculating annual revenue requirements for access elements, net investment shall be apportioned between common line and all other interstate services. Expenses shall also be apportioned between common line and all other interstate services.

* * * * *

11. Section 69.302 is amended by revising the first sentence of the introductory text of paragraph (b) to read as follows:

**§ 69.302 Net investment.**

* * * * *

(b) Except as provided in § 69.301(a), investment in Accounts 2002, 2003, and, to the extent inclusions are allowed by this Commission, Account 2005, shall be apportioned on the basis of total investments in Account 2001, Telecommunications Plant in Service.

* * * * *

12. Section 69.303 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

**§ 69.303 Information Origination/ Termination Equipment (IOT).**

(a) Except as provided in § 69.301(a), investment in public telephones and appurtenances shall be assigned to the Common Line element, if capable of use with the services of more than one interexchange carrier, or the Limited Pay Telephone element, if capable of use with the services of only one interexchange carrier.

(b) Except as provided in § 69.301(a), investment in all other IOT shall be apportioned between the Special Access and Common Line elements on the basis of the relative number of equivalent lines in use, as provided herein. * * *

13. Section 69.304 is amended by revising paragraph (b) and the first sentence of paragraph (c) to read as follows:

**§ 69.304 Subscriber line cable and wire facilities.**

* * * * *

(b) Except as provided in § 69.301(a), investment in interstate and foreign private lines and interstate WATS access lines shall be assigned to the Special Access element.

(c) Except as provided in § 69.301(a), investment in lines terminating in public telephone which may only access the services of one interexchange carrier (or partnership) shall be assigned to the Limited Pay Telephone element. * * *

14. Section 69.305 is amended by revising paragraphs (a) and (c) and the first sentence of paragraph (b) to read as follows:

**§ 69.305 Carrier cable and wire facilities (C&WF).**

(a) Except as provided in § 69.301(a), Carrier C&WF that is not used for "origination" or "termination" as defined in § 69.2(bb) and § 69.2(cc) shall be assigned to the interexchange category.

(b) Except as provided in § 69.301(a), Carrier C&WF, other than WATS access lines, not assigned pursuant to paragraph (a) of this section that is used for interexchange services that use switching facilities for origination and termination that are also used for local exchange telephone service shall be apportioned between the Dedicated Transport and Common Transport elements. * * *

(c) Except as provided in § 69.301(a), all Carrier C&WF that is not apportioned pursuant to paragraphs (a) and (b) of this section shall be assigned to the Special Access element.

15. Section 69.306 is amended by revising paragraphs (a) and (d) and the first sentences of paragraphs (b) (c), and (e) to read as follows:

**§ 69.306 Central office equipment (COE).**

(a) Except as provided in § 69.301(a), the Separations Manual categories shall be used for purposes of apportioning investment in such equipment except that any Central office equipment attributable to a Dedicated Transport subelement shall be assigned to the Dedicated Transport element.

(b) Except as provided in § 69.301(a), COE Category 1 (Operator Systems Equipment) shall be apportioned among the interexchange category and the access elements as follows: Category 1 that is used for intercept services shall be assigned to the Local Switching element. * * *

(c) Except as provided in § 69.301(a), COE Category 2 (Tandem Switching equipment) that is deemed to be exchange equipment for purposes of the Modification of Final Judgment in *United States* v. *Western Electric Co.* shall be assigned to the Common Transport element. * * *

(d) Except as provided in § 69.301(a) and except as provided in paragraph (a) of this section, COE Category 3 (Local Switching Equipment) shall be assigned to the Local Switching element.

(e) Except as provided in § 69.301(a), COE Category 4 (Circuit Equipment) shall be apportioned among the interexchange category and the Common Line, Limited Pay Telephone, Dedicated Transport, Common Transport, and Special Access elements. * * *

16. Section 69.307 is revised to read as follows:

**§ 69.307 General support facilities.**

Except as provided in § 69.301(a), General Support Facilities investments shall be apportioned among the interexchange category, the billing and collection category, and Common Line, Limited Pay Telephone, Local Switching, Information, Dedicated Transport, Common Transport, and Special Access elements on the basis of Central Office Equipment, Information Origination/Termination Equipment, and Cable and Wire Facilities excluding Category 1.3, combined.

17. Section 39.308 is revised to read as follows:

**§ 69.308 Equal access equipment.**

Except as provided in § 69.301(a), Equal Access investment shall be assigned to the Local Switching element unless the telephone company chooses to implement a separate Equal Access element as provided in § 69.4(d), in which case Equal Access investment shall be assigned to the Equal Access element.

18. Section 69.309 is revised to read as follows:

**§ 69.309 Other investment.**

Except as provided in § 59.301(a), investment that is not apportioned pursuant to §§ 69.302 through 69.308 shall be apportioned among the interexchange category, the billing and collection category, and access elements in the same proportions as the combined investment that is apportioned pursuant to §§ 69.303 through 69.308.

19. Section 69.310 is revised to read as follows:

**§ 69.310 Capital Leases.**

Except as provided in § 69.301(a), Capital Leases in Account 2680 shall be directly assigned to the appropriate interexchange category or access elements consistent with the treatment prescribed for similar plant costs or shall be apportioned in the same manner as Account 2001.

20. Section 69.401 is revised to read as follows:

**§ 69.401 Direct expenses.**

(a) Except as provided in § 69.301(a), Plant Specific Operations Expenses in Accounts 6110 and 6120 shall be apportioned among the interexchange category, the billing and collection category and appropriate access elements on the following basis:

(1) Account 6110—Apportion on the basis of other investment apportioned pursuant to § 69.309.

(2) Account 6120—Apportion on the basis of General and Support Facilities investment pursuant to § 69.307.

(b) Except as provided in § 69.301(a), Plant Specific Operations Expenses in Accounts 6210, 6220, and 6230 shall be apportioned among the interexchange category and access elements on the basis of the apportionment of the total COE investment.

(c) Except as provided in § 69.301(a), Plant Specific Operations Expenses in Accounts 6310 and 6410 shall be assigned to the appropriate investment category and shall be apportioned among the interexchange category and access elements in the same proportions as the total associated investment.

(d) Except as provided in § 69.301(a), Plant Non-Specific Operations Expenses in Accounts 6510 and 6530 shall be apportioned among the interexchange category, the billing and collection category, and access elements in the same proportions as the combined investment in COE, IOT, and C&WF apportioned to each element and category.

(e) Except as provided in § 69.301(a), Plant Non-Specific Operations Expenses in Account 6540 shall be assigned to the interexchange category.

(f) Except as provided in § 69.301(a), Plant Non-Specific Operations Expenses in Account 6560 shall be apportioned among the interexchange category, the billing and collection category, and access elements in the same proportion as the associated investment.

(g) Except as provided in § 69.301(a), amortization of embedded customer premises wiring investment shall be deemed to be associated with § 69.303(b) IOT investment for purposes of the apportionment described in paragraph (c) of this section.

21. Section 69.402 is revised to read as follows:

**§ 69.402 Operating taxes (Account 7200).**

(a) Except as provided in § 69.301(a), federal income taxes, state and local income taxes, state and local gross receipts or gross earnings taxes that are collected in lieu of a corporate income tax shall be apportioned among the interexchange category, the billing and collection category and all access elements based on the approximate net taxable income on which the tax is levied (positive or negative) applicable to each element and category.

(b) Except as provided in § 69.301(a), all other operating taxes shall be apportioned among the interexchange category, the billing and collection category and all access elements in the same manner as the investment apportioned to each element and category pursuant to § 69.309 Other Investment.

22. Section 69.403 is revised to read as follows:

**§ 69.403 Marketing expense (Account 6610).**

Except as provided in § 69.301(a), Marketing expense shall be apportioned among the interexchange category and all access elements in the same proportions as the combined investment that is apportioned pursuant to § 69.309.

23. Section 69.404 is amended by revising the first sentence to read as follows:

**§ 69.404 Telephone operator services expenses in Account 6620.**

Except as provided in § 69.301(a), telephone operator services expenses shall be apportioned among the interexchange category, and the Local Switching and Information elements based on the relative number of weighted standard work seconds. * * *

24. Section 69.405 is revised to read as follows:

**§ 69.405 Published directory expenses in Account 6620.**

Except as provided in § 69.301(a), Published Directory expenses shall be assigned to the Information element.

25. Section 69.406 is amended by revising the first sentence of paragraph (a) to read as follows:

**§ 69.406 Local business office expenses in Account 6620.**

(a) Except as provided in § 69.301(a), Local business office expenses shall be assigned as follows: * * *

* * * * *

26. Section 69.407 is amended by revising the first sentence of paragraph (b) and paragraph (c) to read as follows:

**§ 69.407 Revenue accounting expenses in Account 6620.**

* * * * *

(b) Except as provided in § 69.301(a), Revenue Accounting Expenses that are attributable to carrier's carrier access billing and collection expense shall be apportioned among all carrier's carrier access elements except the Common Line element. * * *

(c) Except as provided in § 69.301(a), all other Revenue Accounting Expenses shall be assigned to the billing and collection category.

27. Section 69.408 is revised to read as follows:

**§ 69.408 All other customer services expenses in Account 6620.**

Except as provided in § 69.301(a), all other customer services expenses shall be apportioned among the interexchange category, the billing and collection category, and all access elements based on the combined expenses in §§ 69.404 through 69.407.

28. Section 69.409 is revised to read as follows:

**§ 69.409 Corporate operations expenses (Accounts 6710 and 6720).**

Except as provided in § 69.301(a), all corporate operations expenses shall be apportioned among the interexchange category, the billing and collection category and all access elements in accordance with the Big 3 Expense Factor as defined in § 69.2(f).

29. Section 69.410 is revised to read as follows:

**§ 69.410 Equal access expenses.**

Except as provided in § 69.301(a), Equal Access expenses shall be assigned to the Local Switching element unless the telephone company chooses to implement a separate Equal Access element as provided in § 69.4(d), in which case Equal Access expenses shall be assigned to the Equal Access element.

30. Section 69.411 is revised to read as follows:

**§ 69.411 Other expenses.**

Except as provided in §§ 69.301(a), 69.412, 69.413, and 69.414, expenses that are not apportioned pursuant to §§ 69.401 through 69.410 shall be apportioned among the interexchange category and all access elements in the same manner as § 69.309 Other investment.

[FR Doc. 90-7121 Filed 4-3-90; 8:45 am]
BILLING CODE 6712-01-M

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**47 CFR Part 80**

**[PR Docket No. 90-134; FCC 90-92]**

## Maritime Services; Amendment of the Maritime Services Rules (part 80) to increase the mileage limit contained in the general exemption for small passenger vessels operated on domestic voyages

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission has proposed to amend the rules that exempt U.S. small passenger vessels from the requirement that the vessels be equipped with a manual Morse code radiotelegraph station. The Commission proposes to increase the mileage limit in the current general exemption to permit voyages up to 500 nautical miles from the nearest land, and establish a "step" system of communications equipment requirements based on the maximum distance operated from land. At increasingly greater distances from land, vessels would be required to carry additional radio equipment.

**DATES:** Comments are due by May 21, 1990 and reply comments by June 5, 1990.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Eric Malinen, Aviation & Marine Branch, Private Radio Bureau, (202) 632-7175.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, adopted March 8, 1989, and released March 29, 1990. 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 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

### Summary of Notice of Proposed Rule Making

1. The Commission has proposed to amend the maritime services rules that exempt U.S. passenger vessels of less than 100 gross tons (small passenger vessels), not subject to the International convention for the Safety of Life at Sea, 1974, as amended, T.I.A.S. No. 9352 (Safety Convention), from the radiotelegraph provisions of Part II of Title III of the Communications Act of 1934, as amended (Communications Act). This general exemption would require that such vessels be equipped with certain radiotelephone equipment and not be operated more than 500 nautical miles from the nearest land. The current general exemption permits operations of up to 100 nautical miles.

2. The Commission administers compulsory ship radio requirements for the promotion of safety of life and property at sea. Subject to the Commission's authority to issue exemptions, all U.S. vessels operated in the open sea that carry or are certificated to carry more than 12 passengers ("passenger" vessels) are required by section 351(a) of the Communications Act, 47 U.S.C. 351(a), to be equipped with a manual Morse code radiotelegraph station. Section 352(b)(3) of the Communications Act, 47 U.S.C. 352(B)(3), permits the Commission to exempt from the above provision "[p]assenger vessels of less than one hundred gross tons not subject to the

radio provisions of the Safety Convention"—that is, U.S. small passenger vessels not operated on international voyages. The present proposal would increase to 500 nautical miles the mileage limitation contained in the general exemption for small passenger vessels, see § 80.836(a) of the Commission's Rules, 47 CFR 80.836(a).

3. The Commission noted that there are small passenger vessels whose operations take them outside of the 100 nautical mile limit. In such cases the Commission, normally in cooperation with the U.S. Coast Guard, has granted an individual exemption to each vessel. For instance, approximately 40 per cent of the small passenger vessels operating in the Gulf of Mexico in support of the offshore oil and mineral industry are certified by the Coast Guard to operate at distances of up to 200 nautical miles from the nearest land. The Coast Guard has noted that these vessels could be certified for open ocean voyages with no limit whatsoever on their operating distance from land. The Commission has granted individual exemptions to such vessels provided they comply with Part III of Title III of the Communications Act and with the Commission's Rules, and are capable of communicating on the high frequency (HF) channels designated for distress and safety communications. See generally § 80.369(b) of the Commission's Rules, 47 CFR 80.369(b) (HF channels). Additionally, the Commission has granted individual radiotelegraph exemptions to small passenger vessels operated on long distance fishing trips or nature expeditions.

4. The small passenger vessel proposal follows from the premise that adequate safety communications can be ensured on voyages over 100 nautical miles from land, just as they are for vessels operating under the current general exemption. This can be accomplished by the carriage of high frequency single sideband radiotelephone equipment or satellite communications equipment in lieu of manual Morse code radiotelegraph equipment. These newer technologies offer radio performance equal to or superior to radiotelegraphy, and are easer to operate. An additional benefit of the proposal is that it would reduce the administrative burdens imposed on the maritime public and on the Commission by making it unnecessary that vessel operators apply for individual radiotelegraph exemptions.

5. Under the proposal, small passenger vessels would fit-out with additional equipment in a "step" or tiered approach. At increasingly greater distances from land, vessels would be required to carry additional radio equipment. The radiotelephone installations required on vessels operated up to 100 nautical miles from land would remain as under the current general exemption: A very high frequency (VHF) radiotelephone installation and a medium frequency (MF) radiotelephone installation. Vessels operated up to 200 nautical miles from land would carry an additional VHF radiotelephone installation and communications capability on all of the distress and safety frequencies listed in § 80.369(b) of the Commission's Rules, 47 CFR 80.369(b). Vessels operated up to 500 nautical miles from land would carry the above plus (1) an independent single sideband radiotelephone installation or a ship earth station, (2) communications capability on all of the distress and safety frequencies listed in § 80.369(a) of the Commission's Rules, 47 CFR 80.369(a), (3) ship-to-shore communications capability on the frequencies listed in § 80.369(d) of the Commission's Rules, 47 CFR 80.369(d), (4) a source of power independent of the vessel's main power source available to power the single sideband radiotelephone, and (5) a radiotelephone distress frequency watch receiver with a radiotelephone alarm signal generator for ship-to-ship distress alerting. In addition, vessels in this last category would, on voyages of more than 24 hours, participate in the U.S. Coast Guard's automated mutual-assistance vessel rescue system.

6. The Commission seeks comment on the proposed frequency bands to be used, and on the proposed equipment requirements for the various distances, including the power, receiver sensitivity, and antenna requirements. The Commission also seeks comment on whether the rules pertaining to small passenger vessels should permit greater flexibility of operations. For example, the proposal would permit a ship earth station to be used in lieu of a single sideband radiotelephone for vessels that operate more than 200 nautical miles from land. Should a ship earth station be permitted in place of the single sideband radiotelephone for small passenger vessels operated more than 20 nautical miles from land? Should the general exemption restrict a small passenger vessel's maximum distance from land in instances where the distance is otherwise approved by the U.S. Coast Guard?

7. The proposed amended rules are set forth at the end of this document.

**Initial Regulatory Flexibility Analysis**

8. Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), see 5 U.S.C. 603, an initial regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this Notice, which may be obtained from the Commission or its copy contractor.

**Procedural Matters**

9. The rule amendments proposed herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and found to decrease the information collection burden that the Commission imposes on the public. The proposed general exemption, by increasing the mileage limit within which small passenger vessels could operate without first having to obtain formal individual exemptions from the Commission, could avoid unnecessary administrative procedures for both licensees and the Commission. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

10. This is a non-restricted notice and comment rule making proceeding. For the rules governing *ex parte* contacts, see §§ 1.200–.216 of the Commission's Rules, 47 CFR 1.200–.216.

11. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before May 21, 1990, and reply comments on or before June 5, 1990. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

12. Authority for issuance of this Notice is contained in sections 4(i), 303(r), and 352(b)(3) of the Communications Act of 1934, as

amended, 47 U.S.C. 154(i), 303(r), and 352(b)(3).

13. A copy of this Notice will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 80**

Communications equipment, Radiotelegraphy, Radiotelephony, Vessels.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

**Proposed Rules**

Part 80 of chapter I of title 47 of Code of Federal Regulations is proposed to be amended as follows:

## PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 80.836, paragraph (a) is revised to read as follows:

**§ 80.836 General and individual ship exemptions.**

(a) All U.S. passenger vessels of less than 100 gross tons, not subject to the radio provisions of the Safety Convention, are exempt from the radiotelegraph provisions of part II of title III of the Communications Act, provided that the vessels are navigated not more than 500 nautical miles from the nearest land and are equipped with a radiotelephone installation fully complying with the provisions of part III of title III of the Communications Act and the Commission's Rules.

* * * * *

3. In § 80.905, paragraphs (a)(2) through (c) are redesignated (b) through (d), a new paragraph (a) is added, paragraph (a)(1) is revised, and new paragraphs (a)(2), (a)(3) (i)–(iii), and (a)(4) (i)–(vii) are added to read as follows:

**§ 80.905 Radiotelephone installation.**

(a) Vessels subject to part III of title III of the Communications Act that operate in the waters described in § 80.901 must, at a minimum, be equipped as follows:

(1) Vessels operating within the communications range of a VHF public coast station or U.S. Coast Guard station which maintains a watch on 156.800 MHz while the vessel is navigated must be equipped with a VHF radiotelephone installation. Vessels must not operate more than 20 nautical miles from the receiving location of such a station.

(2) Vessels operating beyond the 20 nautical mile limitation specified in paragraph (a)(1) of this section, but not more than 100 nautical miles from the nearest land, must be equipped with a medium frequency transmitter capable of J3E emission and a receiver capable of reception of J3E emission within the band 1605 to 2850 kHz in addition to the VHF radiotelephone installation required by paragraph (a)(1) of this section.

(3) Vessels operating more than 100 nautical miles but not more than 200 nautical miles from the nearest land must:

(i) Be equipped with two VHF installations meeting the requirements of paragraph (a)(1) of this section;

(ii) Be equipped with a radiotelephone transmitter and receiver meeting the requirements of paragraph (a)(2) of this section; and

(iii) Be capable of transmitting and receiving distress and safety messages on any of the distress and safety frequencies listed in § 80.369(b).

(4) Vessels operating more than 200 nautical miles but not more than 500 nautical miles from the nearest land must:

(i) Be equipped with two VHF radiotelephone installations meeting the requirements of paragraph (a)(1) of this section;

(ii) Be equipped with a single sideband radiotelephone capable of operating on any distress and safety frequency in the medium frequency or high frequency bands listed in §§ 80.369 (a) and (b), on any of the ship-to-shore calling frequencies in the high frequency bands listed in § 80.369(d), and on at least four of the AMVER HF duplex channels;

(iii) Be equipped with either an additional single sideband radiotelephone installation meeting the requirements of paragraph (a)(4)(ii) of this section, or a ship earth station capable of voice operation;

(iv) Be equipped with a reserve power supply meeting the requirements of §§ 80.917(b), 80.919, and 80.921 capable of powering the single sideband radiotelephone required by paragraph (a)(4)(ii) of this section;

(v) Participate in the automated mutual-assistance vessel rescue system (AMVER) on all voyages of more than 24 hours;

(vi) Be equipped with a radiotelephone distress frequency watch receiver as specified in § 80.269; and

(vii) Be equipped with an automatic radiotelephone alarm signal generator as specified in § 80.221.

* * * * *

4. Section 80.909 is revised to read as follows:

**§ 80.909 Radiotelephone transmitter.**

(a) The medium frequency transmitter must have a peak envelope output power of at least 60 watts for J3E emission on 2182 kHz and at least one ship-to-shore working frequency within the band 1605 to 2850 kHz enabling communication with a public coast station if the region in which the vessel is navigated is served by a public coast station operating in this band.

(b) The single sideband radiotelephone must be capable of operating on maritime frequencies in the band 1605 to 27500 kHz with a peak envelope output power of at least 120 watts for J3E emission and H3E emission on 2182 kHz and J3E emission on the distress and safety frequencies listed in § 80.369(b).

(c) The transmitter complies with the power output requirements specified in paragraphs (a) or (b) of this section when:

(1) The transmitter can be adjusted for efficient use with an actual ship station transmitting antenna meeting the requirements of § 80.923; and

(2) The transmitter, with normal operating voltages applied, has been demonstrated to deliver its required output power on the frequencies specified in paragraphs (a) or (b) of this section into either an artificial antenna consisting of a series network of 10 ohms effective resistance and 200 picofarads capacitance or an artificial antenna of 50 ohms nominal impedance. An individual demonstration of power output capability of the transmitter, with the radiotelephone installation normally installed on board ship, may be required.

(d) The single sideband radiotelephone must be capable of transmitting clearly perceptible signals from ship to shore. The transmitter complies with this requirement if it is capable of enabling communication with a public coast station on working frequencies in the 4000 to 27500 kHz band specified in § 80.371(b) under normal daytime operating conditions.

5. In § 80.913, paragraphs (b) through (f) are redesignated as paragraphs (c) through (g), a new paragraph (b) is added, and newly redesignated paragraphs (e) and (f) are revised to read as follows:

**§ 80.913 Radiotelephone receivers.**

* * * * *

(b) If a single sideband radiotelephone installation is provided, the receiver must be capable of reception of H3E and J3E emissions on 2182 kHz and J3E emission on any receiving frequency authorized pursuant to § 80.909.

* * * * *

(e) Any receiver provided as a part of the radiotelephone installation must have a sensitivity of at least 50 microvolts in the case of MF equipment, and 1 microvolt in the case of HF or VHF equipment.

(f) The receiver required in paragraphs (a), (b) or (c) of this section must be capable of efficient operation when energized by the main source of energy. When a reserve source of energy is required pursuant to § 80.905 or § 80.917, the receiver must also be capable of efficient operation when energized by the reserve source of energy.

* * * * *

6. Section 80.923 is amended by revising the first sentence to read as follows:

**§ 80.923 Antenna system.**

An antenna must be provided in accordance with the applicable requirements of § 80.81 which is as efficient as practicable for the transmission and reception of radio waves. * * *

7. Section 80.931 is amended by revising the first sentence to read as follows:

**§ 80.931 Test of radiotelephone installation.**

Unless normal use of the radiotelephone installation demonstrates that the equipment is in proper operating condition, a test communication on a required frequency in the 1605 to 27500 kHz band or the 156 to 162 MHz band must be made by a qualified operator each day the vessel is navigated. * * *

[FR Doc. 90-7647 Filed 4-3-90; 8:45 am]

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# Notices

Federal Register
Vol. 55, No. 65
Wednesday, April 4, 1990

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

### Federal Grain Inspection Service

### Request for Designation Applicants To Provide Official Services in the Paris, Illinois Geographic Area (IL)

**AGENCY:** Federal Grain Inspection Service (Service), USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the designation of Paris Illinois Grain Inspection has terminated, due to the death of the sole proprietor, Mr. Robert R. Beals. The Service is therefore requesting applications for designation to provide official services under the U.S. Grain Standards Act, as amended (Act) in the area formerly assigned to Paris.

**DATES:** Applications to be postmarked on or before May 4, 1990.

**ADDRESSES:** Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue SW., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** James R. Conrad, telephone (202) 447–8525.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

The geographic area that was assigned to Paris, in the States of Illinois and Indiana, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by U.S. Route 36 east across the Illinois-Indiana State line to the western Parke County line; the northern Parke and Putnam County lines;

Bounded on the East by the eastern Putnam, Owen, and Greene County lines;

Bounded on the South by the southern Greene County line, the southern Sullivan County line west to U.S. Route 41 (150); U.S. Route 41 (150) south to U.S. Route 50; U.S. Route 50 west across the Indiana-Illinois State line to Illinois State Route 33; Illinois State Route 33 north and west to the western Crawford County line; and

Bounded on the West by the western Crawford and Clark County lines; the western Edgar County line north to U.S. Route 36.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Tabor Grain Co., Newman, Douglas County, Illinois; Tabor Grain Co., Oakland, Coles County, Illinois; and Cargill, Inc., Dana, Vermillion County, Indiana (located inside Champaign-Danville Grain Inspection Departments, Inc.'s area).

Interested parties are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. Accordingly, designation in the specified geographic area is for a period not to exceed 3 years. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Persons or firms located in this geographic area requiring official inspection service should contact the Peoria Field Office at (309) 671–7043, until such time as an applicant is designated to perform official services.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 29, 1990.

**J.T. Abshier,**

*Director, Compliance Division.*

[FR Doc. 90–7682 Filed 4–3–90; 8:45 am]

BILLING CODE 3410–EN–M

### Forest Service

### Boundary Description; Cache La Poudre Wild and Scenic River, CO

**AGENCY:** Arapaho and Roosevelt National Forests.

**ACTION:** Notice; availability of Cache La Poudre Wild and Scenic River Management Plan, maps and boundary description.

**SUMMARY:** The Forest Supervisor of the Arapaho and Roosevelt National Forest gives notice of the completion and availability of the Cache La Poudre Wild and Scenic River Management Plan. This plan is an amendment to the Forest Plan. Maps of the designated area and a narrative boundary description are available for review at the Supervisor's Office and at Estes-Poudre Ranger District.

**ADDRESSES:** Send requests for the final plan to Forest Supervisor, Arapaho and Roosevelt National Forests, 240 W. Prospect Street, Fort Collins, Colorado 80524.

**FOR FURTHER INFORMATION CONTACT:** Mike Lloyd, District Ranger, Estes-Poudre Ranger District, 148 Remington Street, Fort Collings, Colorado 80524, (303) 482–3822.

**SUPPLEMENTARY INFORMATION:** On October 30, 1986, seventy-five miles of the Cache La Poudre River were designated as part of the National Wild and Scienic Rivers System, by Public Law 99–590. This law also requires the Forest Service to prepare a plan for managing 61 miles of the designated river within Roosevelt National Forest. The plan addresses resource protection,

development of lands and facilities, user capacities, and other management practices to achieve the purposes of the Wild and Scenic Rivers Act.

The current Arapaho and Roosevelt National Forests Land and Resource Management Plan was approved on January 4, 1984. The Forest Plan includes standards and guidelines that protected the Poudre River while it was being studied. It also provides direction for managing the river and adjacent lands after designation. The Cache La Poudre Wild and Scenic River Management Plan is an amendment to the Forest Plan, and provides more specific direction for management of the designated sections of the Poudre.

The Forest Plan Map shows the boundaries for the Wild and Scenic river Study Area. This map is revised to show the legal boundary of the designated Wild and Scenic River. Detailed maps and a narrative boundary description are available for review at the Forest Supervisor's office and at Estes-Poudre Ranger District.

A variety of scoping and public involvement activities were conducted by the Forest Service. These included: Sending over 500 copies of a Draft Plan to know interested individuals, newspaper articles, radio announcements, public meetings, meetings with other government agencies, presentations to special interest groups, displays and handout information at Earth Day and other community events, open houses, and talking to people using the Poudre River.

The official responsible for approving this amendment to the Forest Plan is the Forest Supervisor, Arapaho and Roosevelt National Forests, 240 West Prospect Street, Fort Collins, Colorado 80526. The District Ranger, Estes-Poudre Ranger District is delegated responsibility for preparing the Wild and Scenic River Management Plan for the Cache La Poudre.

Dated: March 23, 1990.

**M.M. Underwood, Jr.,**

*Forest Supervisor.*

[FR Doc. 90-7652 Filed 4-3-90; 8:45 am]

BILLING CODE 3410-11-M

## Intent To Prepare an Environmental Impact Statement for the Proposed Lakewood Raw Water Pipeline, Roosevelt National Forest, Boulder County, CO

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement on a proposal to construct a raw water pipeline adjacent to an existing pipeline. The existing pipeline runs northeast of Lakewood Reservoir to Betasso water treatment plant which is approximately two and a half (2½) miles west of Boulder, Colorado. A special use permit will be required for this project as dictated by the Federal Land Policy and Management Act of 1976 (90 Stat. 2743). The agency invites written comments and suggestions on the proposed project.

**DATES:** Comments concerning the scope of the analysis should be received in writing by June 1, 1990.

**ADDRESSES:** Send written comments to Michelle J. Nolde, District Ranger, Boulder District, 2995 Baseline Road, Boulder, CO 80303.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Chambers, District Planner, (303) 444-6001.

**SUPPLEMENTARY INFORMATION:** The project under consideration will replace an existing pipeline constructed in the 1950's. The pipeline will provide water to the existing Betasso Water Treatment Plant serving the City of Boulder.

The previous analysis of replacement of this pipeline from Sugarloaf Saddle to the Betasso Water Treatment Plant by Boulder resulted in the preparation of an Environmental Assessment (EA) by Boulder, issuance of a Decision by the Forest Service, appeal by local residents, and remand of the decision to the Arapaho and Roosevelt National Forests Supervisor. Boulder has identified new construction alternatives not previously presented in the application for a Special Use Permit or the EA and has since submitted an amended application for a Special Use Permit.

A range of alternatives will be considered. One of these alternatives will be a no action alternative. The EIS will analyze the cumulative effects of past, current and projected activities for each of the alternatives.

Comments from other Federal, State and local agencies, organizations and individuals who may be interested in, or affected, by the decisions have been and will continue to be solicited. Scoping has been initiated through individual contacts and meetings beginning in the spring of 1987. Several issues have been identified including, but not limited to: Concern about soil erosion, loss of wetlands, noise, and effects the project will have on wildlife, visual resources, and archeological sites. Contacts have been initiated with the Colorado Forest Service, Colorado Division of Wildlife, Boulder County Parks and Open Space, Boulder County Public Works, Colorado Environmental Coalition, Colorado Wildlife Federation, Sierra Club, and many other groups and individuals.

Public comment and participation is welcomed throughout the process. Additional scoping will occur after the publication of this notice in the **Federal Register**. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in October of 1990. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period on the draft environmental impact statement so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the

National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: March 23, 1990.

**M.M. Underwood, Jr.,**

*Forest Supervisor.*

[FR Doc. 90-7653 Filed 4-3-90; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of the Census.

*Title:* 1990 Resurvey of Mature Men.

*Form Number(s):* RMM-1, 2, 3, 4(L), 5(L), 8, 9.

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 4,419 hours.

*Number of Respondents:* 5,019.

*Avg Hours Per Response:* 53 minutes (avg.).

*Needs and Uses:* The National Institute on Aging has awarded a grant to Ohio State University to resurvey the surviving members or the next of kin of the 5,019 men who comprised the mature male panel of the National Longitudinal Surveys conducted from 1966–1983. Ohio State has contracted with the Census Bureau to conduct the resurvey, which will collect information on the work experience, retirement income, health, and family relationships of this nationally representative sample (aged 45–59 in 1966). The new information, along with the data collected previously, will provide the basis for a longitudinal data bank that covers almost a quarter of a century in the lives of these men. This data bank will provide researchers valuable information to study such topics as mortality, quality of life, changes of economic status, and labor market activity of the aging population of the United States.

*Affected Public:* Individuals or households.

*Frequency:* One time only.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 29, 1990.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 90-7719 Filed 4-3-90; 8:45 am]

BILLING CODE 3510-07-M

### Meeting

The Department of Commerce announces the following meeting:

*Name:* Minority Enterprise Development Advisory Council.

*Date and Time:* April 9, 1990—9 a.m. to 4 p.m.; April 10, 1990—9 a.m. to 4 p.m.

*Place:* Capital National Bank, 429 E. Tremont Avenue, Bronx, New York 10457.

*Contact Person:* Guale D. Owens, Confidential Assistant, Minority Business Development Agency, Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230, (202) 377-5061.

*Minutes:* May be obtained from contact person listed above.

*Purpose of Meeting:* Administrative Meeting. Opening meeting—limited seating—anyone wishing to attend please call prior to meeting.

**Kenneth E. Bolton,**

*Director.*

[FR Doc. 90-7656 Filed 4-3-90; 8:45 am]

BILLING CODE 3510-21-M

## National Oceanic and Atmospheric Administration

### Western Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council and its Standing Committees will hold public meetings in two separate locations. On April 9–10, 1990, the Council's Committees will meet at the Guam Hilton, Tamuning, Guam, at 8 a.m., on each day. On April 10–11 the Council also will meet at the Guam Hilton. On April 10 the Council will begin meeting at 1:30 p.m., and on April 11 at 9 a.m. On April 12 at 9 a.m., the Council will begin meeting at the Aqua Resort, Achugao, San Roque Village, Saipan, Commonwealth of the Northern Mariana Islands (CNMI).

At its 68th meeting, the Council will hear fisheries reports from islanders and government fisheries representatives from American Samoa, Guam, Hawaii, and the CNMI. The status of fishery management plans (FMPs) covering crustaceans, bottomfish, pelagics, and precious corals also will be discussed.

The Council also will discuss: (1) enforcement reports from the U.S. Coast Guard and NOAA/NMFS; (2) planning team reports on annual reports and amendments; (3) a report on limited entry discussion with lobster fishermen; (4) effects of increasing minimum commercial size limit of opakapaka for Hawaii; (5) long range planning—plan of attack; (6) fishing rights of indigenous peoples and limited entry projects for American Samo, Guam, Hawaii and the CNMI; (7) American Samoa tuna cannery waste dump designation; (8) guidelines to govern incidental take of marine mammals; (9) composition of the ecosystem and habitat subpanels; (10) general administrative matters; (11) update of Magnuson Fishery Conservation and Management Act amendments, as well as other Council business.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: March 29, 1990.

**David S. Crestin,**

*Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90-7645 Filed 4-3-90; 8:45 am]

BILLING CODE 3510-22-M

### Western Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will hold a public Fishermen's Forum at two separate locations on April 10–11, 1990, at 7 p.m., on each day. On April 10 the Fishermen's Forum will be held at the Guam Public Market; on April 11 the forum will be held at the Aqua Resort, Saipan, at the Commonwealth of the Northern Mariana Islands.

The forum will provide an opportunity for fishermen to directly discuss with Council members issues of mutual interest including: (1) ultra-sonic tracking of large pelagic fish; (2) a National Seafood Inspection Program for vessels; (3) native rights; (4) fishing vessel safety study; (5) tuna inclusion; (6) tuna transshipment; and (7) monofilament longline techniques.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: March 29, 1990.

**David S. Crestin,**

*Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90-7646 Filed 4-3-90; 8:45 am]

BILLING CODE 3510-22-M

## Marine Mammals

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Issuance of Scientific Research Permit No. 695.

**SUMMARY:** On Tuesday, October 31, 1989 (54 FR 45776) and Monday, December 11, 1989 (54 FR 50793), notice was published in the **Federal Register** that an application (P6L) had been filed by Drs. Daryl J. Boness and Olav T. Oftedal of the National Zoological Park—Smithsonian Institution, Washington, DC, to import over a three-year period, samples of milk (including gastric milk contents), blood and tissues (organs and blubber) from 218 harbor seals (*Phoca Vitulina*) and 160 gray seals (*Halichoerus grypus*) from Canada.

Notice is hereby given that on March 23, 1990, as authorized by the provisions of 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), the National Marine Fisheries Service issued a Permit for the above research activities subject to the Special Conditions set forth therein. The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, NOAA, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910;

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930; and

Director, National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE BIN C15700, Seattle, Washington 98115.

Dated: March 23, 1990.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs.*

[FR Doc. 90-7677 Filed 4-3-90; 8:45 am]

BILLING CODE 3510-22-M

## COMMISSION ON AGRICULTURAL WORKERS

### Meeting

**AGENCY:** Commission on Agricultural Workers.

**ACTION:** Announcement of meeting.

**SUMMARY:** This notice announces the second formal meeting of the Commission. The Commission was established by the Immigration Reform and Control Act (IRCA) of 1986 under section 304. The meeting is being held to discuss the Commission's work program. The meeting will be open, except positions may be closed to discuss matters exempted from public disclosure pursuant to subsection (c) of section 552b of title 5, United States Code.

**DATES:** 9:30 a.m.-1:30 p.m., April 19, 1990.

**ADDRESSES:** Dupont Plaza Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Richard Peterson, Telephone: (202) 673-5348.

Dated: March 30, 1990.

**Richard R. Peterson,**

*Acting Executive Director.*

[FR Doc. 90-7744 Filed 4-3-90; 8:45 am]

BILLING CODE 6820-62-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

March 29, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** March 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

*Authority.* Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased, variously, for carryforward and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 27664, published on June 30, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

March 29, 1990.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive of June 23, 1989, as amended, from the Chairman, Committee for the Implementation of Textile Agreements. The directive establishes restraint limits for certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1989 and extends through June 30, 1990.

Effective on March 30, 1990, you are directed to increase the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Indonesia:

| Category | Adjusted 12-Mo. Limit [1] |
|---|---|
| Levels in group I: | |
| 340 | 468,702 dozen. |
| 347/348 | 948,596 dozen. |
| 638/639 | 923,376 dozen. |
| 640 | 522,115 dozen. |
| Sublevel in group II: | |
| 342/642 | 214,078 dozen. |

[1] The limits have not been adjusted to account for any imports exported after June 30, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Donald R. Foote,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*
[FR Doc. 90-7718 Filed 4-3-90; 8:45 am]
BILLING CODE 3510-DR-M

## DEPARTMENT OF THE DEFENSE

### Department of the Army

### Army Science Board; Close Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

*Name of the Committee:* Army Science Board (ASB).

*Dates of Meeting:* 26 April 1990.

*Time:* 0800-1630.

*Place:* The Pentagon, Washington, DC.

*Agenda:* The Army Science Board (ASB) Ad Hoc Subgroup on Electromagnetic and Electrothermal Technologies will convene to review the status of the Office of the Secretary of Defense Electric Gun Program topical review. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,
*Administrative Officer, Army Science Board.*
[FR Doc. 90-7693 Filed 4-3-90; 8:45 am]
BILLING CODE 3710-08-M

### Corps of Engineers, Department of the Army

### Intent to Prepare a Draft Environmental Impact Statement for Proposed Sand Extraction from Monterey Bay, Monterey County, CA

**AGENCY:** U.S. Army Corps of Engineers (S.F. District), Department of Defense.

**ACTION:** Notice of intent to prepare a draft environmental impact statement.

1. *Proposed Action:* The Corps of Engineers (Corps) has received an application for a Department of the Army permit from the Monterey Sand Company to extract speciality industrial sand from the surf zone of southern Monterey Bay in the Marina and Sand City vicinities. The permit application will be processed by the Regulatory Branch of the S.F. District, Corps of Engineers pursuant to section 10 of the River and Harbor Act of 1899 (33 USC 403).

The purpose of the project is to mine sands for use in industry and construction and to allow the company to continue doing business under present methods.

In accordance with the NEPA of 1969, as amended (42 USC 4321 *et seq.*), the Corps has determined that the proposed action may have a significant impact on the quality of the human environment and therefore requires the preparation of an EIS.

2. *Sand Extraction Alternatives:* Four possible alternatives have been identified as possibilities for sand extraction methods.

a. *No Project Plan:* Under this plan, which is equivalent to permit denial by the Corps, no action would be taken by the Monterey Sand Company to continue mining.

b. *Alternate Location Plan:* Under this plan, the applicant would carry out its mining activities outside of the Corps of Engineers Jurisdiction.

c. *Modified Applicant Plan:* This plan allows the applicant to continue drag lining from the surf zone but at reduced volumes.

d. *Applicant's Plan:* Continued Drag Lining at Present Volumes: This plan involves removing sand from the surf zone of southern Monterey Bay using a one cubic yard capacity "V" bucket drag line extending to approximately 40 feet seaward of the mean high water mark. Upon removal, the sand would be transported by means of conveyor belts, flumes, trucks, and bulldozers to various plants for washing, drying, and sorting. These processes would use water from private wells and involve successive screenings and kilning. Typically, each plant (in Marina and Sand City) would process 10 to 30 truckloads, using 10 to 20-yard trucks, each weekday dependent upon demand.

3. *Scoping Process:* Pursuant ot the National Environmental Policy Act, as amended, agency planning for federal or federally permitted projects must include a "scoping" process. Scoping primarily involves determining the scope of issues to be addressed, and identifying the significant issues for in-depth analysis in the draft EIS. The scoping process includes public participation to integrate information regarding public needs and concerns into the environmental document.

A scoping meeting has been scheduled for April 12, 1990 at 7:30 p.m. to take place at City Hall, 1 Sylvan Park, Sand City. Government agencies, public and private interest groups are also invited to further participate in the scoping process by submitting comments on issues pertaining to the proposed project and its alternatives.

a. *Significantly Issues:* The following issues have already been identified as potentially significantly and will be analyzed in the draft EIS:

1. erosion
2. sedimentation
3. water quality
4. economics
5. air quality
6. traffic
7. recreational opportunities

b. *Environmental Requirements:* Environmental review and other consultation requirements applicable to the proposed action include:

1. National Envionmental Policy Act, as amended
2. Clean Water Act, as amended
3. Clean Air Act, as amended
4. National Historic Preservation Act, as amended
5. Fish and Wildlife Coordinate Act
6. Endangered Species Act, as amended
7. Coastal Zone Management Act

4. *Points of Contact:* Questions regarding the scoping process or preparation of the draft EIS may be directed to Lars M. Forsman, Regulatory Branch, (telephone 415-744-3322). Questions regarding the process of permit application may be directed to Frank Kelleher, Regulatory Branch, (telephone 415-744-3324).

John O. Roach Jr.,
*Army Liaison Officer with the Federal Register.*
[FR Doc. 90-7661 Filed 4-3-90; 8:45 am]
BILLING CODE 3710-FS-M

## DEPARTMENT OF EDUCATION

### National Commission on Drug-Free Schools; Meetings

**AGENCY:** National Commission on Drug-Free Schools.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda for a forthcoming meeting of the National Commission on Drug-Free Schools. Notice of this meeting is offered pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2.

**DATES/TIMES:** April 23, 1990, 1 p.m.-4:30 p.m.

**LOCATION:** New Orleans Hilton Riverside and Towers, New Orleans, Louisiana.

**FOR FURTHER INFORMATION CONTACT:** William Modzeleski, Executive Director, National Commission on Drug-Free Schools, Washington, DC., 20202–7584; (202 732–6140.

**AGENDA:** The session will consist of a public hearing, with testimony offered by individuals and organizations representing local and state school boards, on drug-related issues of concern to school board members and the Commission.

**SUPPLEMENTARY INFORMATION:** The National Commission on Drug-Free Schools was established pursuant to section 5051 of Public Law 100–690. Co-chaired by the Secretary of Education and the Director of the Office of National Drug Control Policy, the membership consists of selected members of the Senate and House of Representatives, and citizen members representing various areas of drug education, prevention, and law enforcement. The legislative mandate of the Commission is to develop recommendations for identifying drug-free schools and campuses, identifying model programs to achieve drug-free schools, and to make other findings that are consistent with its mission.

This meeting is open to the public. Records of Commission proceedings are available for public inspection at the Office of the Commission, 330 C Street, SW., Washington, DC., from the hours of 9 a.m. to 5 p.m. during Federal government working days.

Dated: March 28, 1990.

**Ted Sanders,**

*Under Secretary.*

[FR Doc. 90–7660 Filed 4–3–90; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 10412–002 Mississippi]**

### Aero Construction Inc.; Surrender of Preliminary Permit

March 28, 1990.

Take notice that Aero Construction Inc., permittee for the Grenada Lake and Dam Project, located on the Yalobusha River, Grenada County, Mississippi, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 27, 1987, and would have expired on July 31, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on February 17, 1990, and the preliminary permit for Project No. 10412 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

**Lois D. Cashell,**

*Secretary,*

[FR Doc. 90–7662 Filed 4–3–90; 8:45 am]

BILLING CODE 6717–01–M

**[Project No. 10410–001 Mississippi]**

### Aero Construction Inc.; Surrender of Preliminary Permit

March 28, 1990.

Take notice that Aero Construction Inc., permittee for the Arkabutla Lake and Dam Project, located on the Coldwater River, DeSotto and Tate Counties, Mississippi, has requested that its preliminary permit be terminated. The preliminary permit was issued on September 1, 1987, and would have expired on August 31, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on February 17, 1990, and the preliminary permit for Project No. 10410 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

**Lois D. Cashell,**

*Secretary,*

[FR Doc. 90–7663 Filed 4–3–90; 8:45 am]

BILLING CODE 6717–01–M

**[Project No. 10413–002 Mississippi]**

### Aero Construction Inc.; Surrender of Preliminary Permit

March 28, 1990.

Take notice that Aero Construction Inc., permittee for the Sardis Lake and Dam Project, located on the Little Tallahatchie River, Panola County, Mississippi, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 31, 1987, and would have expired on July 31, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on February 27, 1990, and the preliminary permit for Project No. 10413 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be field on the next business day.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90–7675 Filed 4–3–90; 8:45 am]

BILLING CODE 6717–01–M

**[Project No. 10411–002 Mississippi]**

### Aero Construction Inc.; Surrender of Preliminary Permit

March 28, 1990.

Take notice that Aero Construction Inc., permittee for the Enid Lake and Dam Project, located on the Yocona River Yalobusha County, Mississippi, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 27, 1987, and would have expired on July 31, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on February 27, 1990, and the preliminary permit for Project No. 10411 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

**Lois D. Cashell,**

*Secretary,*

[FR Doc. 90–7676 Filed 4–3–90; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. TQ90–2–1–002]**

### Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

March 28, 1990.

Take notice that on March 22, 1990, Alabama-Tennesses Natural Gas Company (Alabama-Tennessee), Post

Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

**First Revised Nineteenth Revised Sheet No. 4**

The tariff sheet is proposed to become effective February 16, 1990. Alabama-Tennessee states that this filing is in compliance with the Commission's letter order issued on March 7, 1990 in Docket Nos. TQ90-2-1-000 and 001. Alabama-Tennessee further states that it reserves the right to file for rehearing of that order and to modify its rates consistent with the ultimate outcome of such proceeding.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 4, 1990. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-7664 Filed 4-3-90; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TM90-9-20-000]**

## Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

March 28, 1990.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on March 26, 1990, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

**Proposed to be effective February 1, 1990**

First Revised Sheet No. 220

Algonquin states that it is filing under Section 4 of its Rate Schedule ATAP to track rate changes made by its transportation supplier, Texas Eastern Transmission Corporation, ("Texas Eastern") in its Rate Schedule FT-1, which underlies Algonquin's Rate Schedule ATAP. The rate changes consist of an increase of $0.0037 per dth in the Rate Schedule FT-1 commodity maximum transportation rate (from $0.2514 to $0.2551 per dth) and in the interruptible commodity maximum rate (from $0.5589 to $0.5626 per dth).

Algonquin states that the effect the rate changes is to increase Algonquin's Rate Schedule ATAP Firm Commodity Maximum to $0.2551, the Interruptible Maximum (under permanent conversions) to $0.5626 and the Interruptible Maximum (under standby conversions) to $0.2551. An increase of $0.0037 per MMBtu.

Algonquin further states that, pursuant to § 4.2(c) of Rate Schedule ATAP, Algonquin is proposing an effective date of February 1, 1990 to coincide with the effective date of Texas Eastern's filing.

Algonquin notes that copies of the filing were served upon each of the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 4, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-7668 Filed 4-3-90; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ90-5-24-001]**

## Equitrans, Inc.; Proposed Change in FERC Gas Tariff

March 28, 1990.

Take notice that Equitrans, Inc. (Equitrans) on March 16, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, effective March 1, 1990.

Substitute Second Revised Substitute Fourteenth Revised Sheet No. 10
Fifteenth Revised Sheet No. 14
Substitute Third Revised Sixth Revised Sheet No. 34

Equitrans states that the foregoing tariff sheets are being filed in compliance with the Commission's Letter Order issued on March 1, 1990 in Docket No. TQ90-5-24-000. The Order directed Equitrans to refile its tariff sheets to reflect the correct Tennessee Gas Pipeline Company's D1 demand rate under Rate Schedule CD-4, in accordance with § 154.305(c) of the Commission's regulation and removal of spot supplier producer demand charges from the Demand D1 rate component to the Commodity rate component under Equitrans' Rate Schedule PLS, in accordance with § 154.305(b)(1) of the Commission's regulations.

Also, Equitrans must refile Tariff Sheet No. 14 to reflect the elimination of Rate Schedule GS-1. On December 29, 1989, Equitrans filed its Section 4 rate filing in Docket No. RP90-70-000, 50 FERC ¶ 61,103 (1990), with a proposed effective date of February 1, 1990. A Commission order, dated January 31, 1990, in the aforementioned docket, permitted the abandonment and elimination of Rate Schedule GS-1, effective February 1, 1990.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 4, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-7669 Filed 4-3-90; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ90-9-4-001**

## Granite State Gas Transmission, Inc.; Proposed Changes in Rates

March 28, 1990.

Take notice that on March 21, 1990, Granite State Gas Tranmission, Inc.

(Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission Revised Thirty-Fourth Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness on March 21, 1990.

According to Granite State, the reduced purchase gas costs underlying the rates on Revised Thirty-Fourth Revised Sheet No. 7 result in a reduction of approximately 95 cents in the Gas Charge component of its wholesale sales rates. The reduced purchase costs result from the availability of spot market purchases to Granite State, it is stated. Granite State further states that it has arranged for a substantial volume of spot market supplies upon the resumption of interruptible transportation Tennessee Gas Pipeline Company.

It is stated that the proposed rate changes are applicable to Granite State's wholesale sales to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 4, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-7670 Filed 4-3-90; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TM90-5-4-000]**

## Granite State Gas Transmission, Inc.; Proposed Changes in Rates

March 28, 1990.

Take notice that on March 21, 1990, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing Second Substitute Twenty-Second Revised Sheet No. 8 in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on January 1, 1990.

According to Granite State, it provides a storage service for Bay State Gas Company under its Rate Schedule GSS with storage capacity provided for in a facility operated by CNG Transmission Corporation (CNG). It is further stated that Granite State's Rate Schedule GSS tracks changes made by CNG under its Rate Schedule GSS pursuant to which Granite State obtains the storage capacity from CNG.

Granite State further states that, on February 1, 1990, it filed Substitute Twenty-Second Revised Sheet No. 8 tracking a change in CNG's Rate Schedule GSS that CNG has filed for effectiveness on January 1, 1990. According to Granite State, its filing was accepted subject to the condition that it refile to reflect any revisions ordered by the Commission in CNG's underlying filing. It is further stated that the Commission rejected the underlying filing in an order issued February 22, 1990, in Docket Nos. RP85-169-048, *et al.* Granite State states that on March 5, 1990, CNG made a filing in compliance with the Commission's order and Second Substitute Twenty-Second Revised Sheet No. 8 tracks the changes in CNG's Rate Schedule GSS compliance filing.

According to Granite State, copies of its filing were served upon Bay State Gas Company and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 4, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-7666 Filed 4-3-90; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ90-7-51-000]**

## Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff; Purchased Gas Adjustment Clause Provisions

March 28, 1990.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on March 26, 1990, tendered for filing Sixth Revised Substitute First Revised Twenty-Fifth Revised Sheet Nos. 57(i) and 57(ii) and Fifth Revised Substitute First Revised Eleventh Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Sixth Revised Substitute First Revised Twenty-Fifth Revised Sheet Nos. 57(i) and 57(ii) and Fifth Revised Substitute First Revised Eleventh Revised Sheet No. 57(v) reflected revised current PGA rates for the months of March and April 1990. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective March 1, 1990, in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before April 4, 1990. 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. 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. 90-7671 Filed 4-3-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1267-000—South Carolina]

## Greenwood County & Duke Power Co.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

March 28, 1990.

The license for the Buzzards Roost Project No. 1267 located on Saluda River in Greenwood, Laurens, and Newberry Counties, South Carolina expired on February 10, 1985. The deadline for filing applications for new license was February 9, 1982. An application for new license has been filed as follows:

| Project No. | Applicant | Contact |
|---|---|---|
| 1267-000 | Greenwood County and Duke Power Company. | Mr. John Lansche, Duke Power Company, P.O. Box 33189, Charlotte, NC 28242. |

Pursuant to section 15(c)(1) of the Federal Power Act, the deadline for the applicant to file final amendments, if any, to its application is June 1, 1990.

The following is the schedule and procedures that was or will be followed in processing the application.

| Date | Action |
|---|---|
| December 30, 1987. | Commission notified the applicant that its application was accepted. |
| February 1, 1988... | Commission issued public notice that the application had been accepted. |

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Mike Dees at (202) 357-0807.

Lois D. Cashell,

*Secretary.*

[FR Doc. 90-7674 Filed 4-3-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ90-4-45-000]

## Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

March 28, 1990.

Take notice that on March 21, 1990, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, tendered for filing a revised tariff sheet to Original Volume 1 of its FERC Gas Tariff to be effective May 1, 1990.

Original Volume No. 1

Thirty-Ninth Revised Sheet No. 4.

This revised tariff sheet is a regularly scheduled PGA. Inter-City states that this PGA reflects an increase in demand charges.

Inter-City states that copies of the filing have been mailed to all of its customers and the affected state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 4, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

*Secretary.*

[FR Doc. 90-7665 Filed 4-3-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-93-000]

## Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 28, 1990.

Take notice that on March 23, 1990, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following sheets to be a part of Rate Schedule TF-1 of its FERC Gas Tariff, Original Volume No. 1-A.

Third Revised Sheet No. 311
Second Revised Sheet No. 312
First Revised Sheet No. 318-A

Northwest has revised Rate Schedule TF-1 to provide alternate delivery point availability for its firm transportation customers. Northwest has also proposed that firm transportation would be available subject to specific operational conditions and a waiver of reservation charge credits, in the event operational conditions do not exist. Northwest has requested an effective date of April 22, 1990 for the tendered sheets.

A copy of this filing is being served on all jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 4, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 90-7672 Filed 4-3-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-91-001]

## United Gas Pipe Line Co.; Tariff Filing

March 28, 1990.

Take notice that on March 23, 1990 United Gas Pipe Line Company (United) tendered for filing the following Tariff Sheets as part of its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Second Revised Sheet No. 4L
Substitute Original Sheet No. 4L.1
Substitute Original Sheet No. 4L.2
Substitute Original Sheet No. 4L.3
Substitute Original Sheet No. 4L.4
Substitute Original Sheet No. 4L.5

United states that this filing is made to correct a calculation error discovered in the allocation worksheet which in turn impacted the tariff sheets filed on March 8, 1990.

United requests that these corrected tariff sheets be substituted for the tariff sheets submitted on March 8, 1990 in this proceeding. United states that the instant filing changes only the allocation of costs and does not change the total take-or-pay buyout and buydown costs included in the March 8, filing.

United has requested that the effective date for the corrected tariff sheets be April 1, 1990.

United states that copies of this filing will be served upon all parties listed on the official service list in this proceeding.

Any person desiring to protest this filing should file a protest with the Secretary, 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 Regulations. All such protests should be filed on or before April 4, 1990.

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. 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. 90-7673 Filed 4-3-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ90-2-11-00]

## United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

March 28, 1990.

Take Notice that on March 23, 1990, United Gas Pipe Line Company (United) tendered for filing the following revised tariff sheets:

**Second Revised Volume No. 1**

Substitute Third Revised Sheet No. 4
Substitute Third Revised Sheet No. 4A
Substitute Third Revised Sheet No. 4B
Substitute Third Revised Sheet No. 4I

These tariff sheets are being filed to correct two errors that were found on the tariff sheets originally filed on March 1, 1990 in Docket No. TQ90-2-11. In that filing United incorrectly stated the Gas Research Institute (GRI) Charge, and reported an incorrect page sequence number. The proposed effective date of the above referenced revised tariff sheets in April 1, 1990.

The above referenced tariff sheets now reflect the correct GRI charge of $.0130. In addition, sheet number 4I has been corrected to read Substitute Third Revised Sheet No. 4I Superseding Second Revised Sheet No. 4I.

United States that the revised tariff sheets are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protect 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 such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such petitions or protests should be filed on or before April 4, 1990.

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.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-7667 Filed 4-3-90; 8:45 am]

BILLING CODE 6717-01-M

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## Office of Fossil Energy

## Pan National Gas Sales, Inc.; Application To Import Liquefied Natural Gas From Algeria

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of application for long-term authorization to import liquefied natural gas from Algeria.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Pan National Gas Sales, Inc. (Pan National), on November 1, 1989, as revised on February 12, 1990, for authorization to import up to approximately 30.4 Bcf (30,400,000 MMBtu) per year of liquefied natural gas (LNG) from Algeria over a term of 15 years, plus an additional 40,000 Mcf per day for the first five years. The proposed imports would be purchased from Sonatrading Amsterdam, B.V. (Sonatrading), a Netherlands company that is wholly owned by Sonatrach, Algeria's national oil and gas company, and resold to Citrus Trading Corp. (Citrus) pursuant to the November 1, 1988, gas purchase contract between Pan National and Citrus (gas purchase contract). Citrus would in turn sell the LNG to Florida Light and Power Company (FLP), an electric utility, for use in electric generation.

The proposed imports would be imported at Lake Charles, Louisiana, and regasified at the existing Lake Charles LNG facilities of Trunkline LNG Company (TLC). The regasified LNG would then be transported from Lake Charles by Trunkline Gas Company (Trunkline) and delivered to Florida Gas Transmission (FGT) at a to be constructed interconnection point between Trunkline and FGT. FGT would then transport and deliver the proposed imports to FLP. FGT has an application pending before the Federal Energy Regulatory Commission (FERC) to increase its mainline capacity by 100,000 Mcf per day in order to effect the deliveries to FPL (FGT's Phase II Expansion Project).

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.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t. May 4, 1990.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION:**

Lot Cooke, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H-087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8116.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** Pan National is a Delaware corporation with its principal place of business in Houston, Texas. Pan National, TLC, and Trunkline are all subsidiaries of Panhandle Eastern Corporation.

On December 23, 1988, in DOE/ERA Order No. 289 (Order 289) (1 ERA Para. 70,133), the DOE authorized Pan National to import from Sonatrading up to 3.3 Tcf of Algerian LNG over a term of 20 years. Pursuant to that authorization, Pan National would market LNG to individual customers under contract terms responsive to current market conditions and Sonatrading would receive 63.24 percent of the sales price, F.O.B. Algeria. Under its purchase agreement with Sonatrading, Pan National is not subject to any minimum purchase requirement and must take only those LNG volumes that have been specifically contracted for by its customers. These sales are subject to confirmation by Sonatrading prior to execution.

Consistent with the DOE "blanket" authorization program, Order 289 required that Pan National submit to the DOE separate applications for proposed sales contracts with terms of more than two years. The current application is submitted pursuant to that requirement. The LNG would be sold by Pan National to Citrus under the terms of their gas purchase contract and the proceeds would be divided between Pan National and Sonatrading in accordance with the import arrangement authorized by Order 289.

Under the gas purchase contract, Pan National agreed to supply and Citrus agreed to purchase up to 30.4 Bcf per year of regasified LNG over a 15-year term from the commencement of deliveries, in addition to "optional volumes" of 40,000 Mcf per day for the first five contract years. Initial deliveries are not expected to commence before April 1, 1990. Citrus would purchase a base volume (not including the "optional volumes") of at least 64,000 MMBtu per day and not greater than 80,000 MMBtu per day. The daily base volume for each month would be nominated by Citrus on a quarterly basis. Citrus would be required to take at least 75 percent of the base volume per day and 98 percent of the base volumes per month. In addition, Citrus could purchase up to 125 percent of the daily base volume for a period not to exceed ten days in each month, however, in no event could the total annual purchases exceed 30.4 Bcf.

The monthly purchase price would be determined by a formula which is a function of the U.S. Gulf Coast price of No. 6 fuel oil, but would be subject to a floor price of $2.00 per MMBtu and a ceiling price of $4.00 per MMBtu, adjusted for inflation. If the formula price for any given month was less than the floor price but more than $1.75, then Citrus would pay the floor price but the difference between the floor price and the formula price would be credited to a separate special account. Thereafter, whenever the formula price exceeded the $2.00 floor price, the price would be reduced by the amount the formula price exceeded $2.00 (but not more than $0.25 per MMBtu) and the separate account balance correspondingly reduced. If the special account at any time equaled or exceeded $2,000,000, Citrus could cease purchases of gas until such time as the formula price exceeded the floor price, unless Pan National was willing to sell the gas at the applicable formula price.

In addition, if the formula price at any time is less than $1.75 per MMBtu, then Pan National could elect to sell the gas at the formula price, or, absent such election by Pan National, Citrus could (1) continue to purchase at the floor price (with $0.25 per MMBtu accruing in the special account), or (2) cease purchase of gas until the formula price is equal to or greater than $1.75 per MMBtu and the special account is less than $2,000,000.

The pricing provisions of the gas purchase contract could be renegotiated at the request of either party at the conclusion of the fifth and tenth contract years. If the parties were unable to agree on new pricing provisions, the matter would be submitted for arbitration.

The gas purchase contract contains an indemnity provision which provides that if Pan National's LNG supply failed for an unexcused reason during the first three contract years, then Pan National would nevertheless have to supply all of Citrus' base volumes through the end of the third contract year. Also, during the fourth and fifth contract years (or during any succeeding two-year period, if Pan National's inability to deliver regasified LNG occurs at any time subsequent to the thrid contract year) Pan National would have to supply the base volumes up to a replacement cost limitation of $60,000,000. At the end of the two-year period, or at such time as the replacement cost limitation is reached, the contract would terminate.

The decision on Pan National's application for import authority will be consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination include need for gas, security of the long-term supply, and any other relevant issues. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is competitive and its gas source will be secure. Parties opposing this import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price.

## NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. 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 at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial 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, a notice will be provided to all parties. If no party reuquests 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 Pan National'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 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 29, 1990.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90–7742 Filed 4–3–90; 8:45 am]

BILLING CODE 6450–01–M

## Western Area Power Administration

### Analysis of the Post-1989 General Power Marketing and Allocation Criteria; Salt Lake City Area Integrated Projects

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Intent to Prepare an Environmental Impact Statement.

**SUMMARY:** The Western Area Power Administration (Western) will prepare an environmental impact statement (EIS) on its Post-1989 General Power Marketing and Allocation Criteria (Marketing Criteria), pursuant to the National Environmental Policy Act of 1969 (NEPA).

The Marketing Criteria were published in the **Federal Register** on February 7, 1986 (51 FR 4844). The Marketing Criteria established the terms by which Western would allocate long-term firm capacity and energy from the Colorado River Storage Project (CRSP), the Collbran Project, and the Rio Grande Project, known collectively as the Salt Lake City Area Integrated Projects (SLCA Integrated Projects), during the period from October 1, 1989, through September 30, 2004. Allocation of marketable capacity and energy is in accordance with the preference provisions of Reclamation Law and the Marketing Criteria. Adjusted final post-1989 firm power allocations for the SLCA Integrated Projects were published in the **Federal Register** on August 24, 1989 (54 FR 35234).

In compliance with NEPA and the Council on Environmental Quality's "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" 40 CFR part 1500 (CEQ Regulations), Western completed an environmental review which resulted in a December 1985 environmental assessment (EA) of the potential environmental and socioeconomic effects of the Marketing Criteria. The analysis concentrated on the estimated potential changes in retail power rates and estimated changes in power consumption at the consumer level. No physical impact component was identified as the proposed action was determined not to change the operations for those facilities within the SLCA Integrated Projects marketing area and, thus, would not affect stream flows. Based on information contained in the EA, Western concluded that implementation of the Marketing Criteria would only redistribute Western's marketable resources and, from a regional perspective, there would be insignificant socioeconomic impacts on the quality of the human environment. Based on the EA, the Department of Energy issued a Finding of No Significant Impact on January 8, 1986. However, given current public debate and interest, Western has since decided to prepare an EIS to facilitate a better public understanding of Western's power marketing activities, and to provide a public forum for the interested public to advance its views.

The proposed action for this EIS is implementation of the Marketing Criteria. Western's objective in this EIS process is to document existing marketing practices, identify alternative marketing practices, and analyze the economic and environmental effects of maintaining or changing the Marketing Criteria. Generally, this will involve a review of how marketable capacity and energy is quantified, allocated, and scheduled from CRSP and other project generating facilities and the consequences of alternative marketing scenarios. Alternatives and issues to be considered in the EIS will be determined through the public scoping process. In addition, Western intends to consolidate the public involvement processes associated with NEPA and the Administrative Procedure Act, 5 U.S.C. 553, so that Western's Record of Decision on the Marketing Criteria will reflect the procedural requuirements of all applicable legislation and regulations.

Western will conduct public scoping meetings in several locations to determine issues to be included in the EIS. The scoping process will be conducted in accordance with the CEQ Regulations and the Department of Energy's "Guidelines for Compliance with the National Environmental Policy Act" (52 FR 47662) (DOE Guidelines). The scoping process also will be used to eliminate issues which are not significant or have been adequately covered by prior environmental review and to identify environmental review and consultation requirements. Western will be the lead agency in development of the EIS. The Fish & Wildlife Service, the National Park Service, and the Bureau of Reclamation have been invited to become cooperating agencies.

As part of Western's efforts to involve the public in this EIS process, Western has developed a presentation on how electric power is produced and supplied, the nature of SLCA Integrated Projects power production and distribution, and other relevant issues. The presentation is available to any interested organization of group within the SLCA Integrated Projects marketing area. The intent of the presentation is to provide information to the public generally about Western's role in the marketing and delivery of Federal power. Western believes this presentation will increase public understanding of CRSP operations and allow the public to define better the issues of concern. Further information on this presentation is available from the Western official identified in this notice.

This notice of intent is being published in accordance with the DOF Guidelines to provide reasonable opportunity for interested persons to participate in the EIS preparation process. Interested persons are invited to make suggestions or comment on the scope of the EIS, on environmental issues, and on alternatives to the proposed action. The comment period on this notice of intent begins with its publication in the **Federal Register** and ends 15 days after the last public scoping meeting.

Written comments should be sent to the address given below. Western will prepare an EIS implementation plan in accordance with the DOE Guidelines to record the results of the scoping process and provide guidance for preparation of the EIS. The Implementation plan will be made available to the public for information.

**DATES:** Scoping meetings will be held in several locations throughout the SLCA Integrated Projects marketing area. A second notice giving dates and locations will be published in the **Federal Register** after meeting arrangements have been made.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth G. Maxey, Deputy Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524–5497.

**SUPPLEMENTARY INFORMATION:** Western was established on December 21, 1977, and was tasked with implementing national energy policy by marketing Federal hydropower over an efficient and reliable transmission system while encouraging conservation and the use of renewable energy resources.

Western's Salt Lake City Area markets hydropower from the SLCA Integrated Projects, the Provo River Project, and the Falcon-Amistad Projects. The resources of the SLCA

Integrated Projects are the following powerplants operated by the Bureau of Reclamation: Flaming Gorge in Utah; Glen Canyon in Arizona; Blue Mesa, Morrow Point, Crystal, Upper Molina, and Lower Molina in Colorado; Fontenelle in Wyoming; and Elephant Butte in New Mexico. The Marketing Criteria apply only to the SLCA Integrated Projects.

The Glen Canyon Dam and powerplant are the largest components of the CRSP system. Because Glen Canyon Dam was authorized and constructed prior to the enactment of NEPA, no EIS was prepared at that time. The Department of the Interior initiated the Glen Canyon Environmental Studies on December 8, 1982, in response to public controversy over the operations at Glen Canyon Dam and the EA prepared for the uprating and rewinding of the generators at the powerplant. The controversy centered on concern about the long- and short-term environmental and recreational impacts associated with the operations at the dam.

On July 26, 1989, the Secretary of the Department of the Interior announced preparation of an EIS to analyze the existing operating criteria of Glen Canyon Dam and to develop a set of environmental criteria that will be used by the Department of the Interior during the development of the Annual Operating Plan for the operation of Glen Canyon Dam. In a **Federal Register** notice dated October 27, 1989, (54 FR 43870), Reclamation stated that the Glen Canyon EIS will address the requirements of the Colorado River Compact, the Colorado River Storage Project Act, the Endangered Species Act, National Park Service mandates, recreation issues, and the requirements of the Department of Energy. Western is a cooperating agency in development of the Department of the Interior's Glen Canyon Dam EIS.

Western will consider the scope of the Department of the Interior's Glen Canyon EIS in order to avoid duplication of effort in preparing the Marketing Criteria EIS. Western will work with the Bureau of Reclamation to coordinate preparation of the two environmental impact statements.

In addition, Western currently is involved in the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin. This is a study and mitigation effort among Western, the Bureau of Reclamation, the Fish and Wildlife Service, Utah, Wyoming, Colorado, water developers, and environmental groups. The program is aimed at recovery of three endangered and one candidate fish species native to the Upper Colorado River Basin.

Issued at Golden, Colorado, February 23, 1990.

William H. Clagett,

*Administrator.*

[FR Doc. 90-7741 Filed 4-3-90; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-400045; FRL-3715-2]

### Financial Assistance Program Eligible for Review

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

**ACTION:** Notice of availability and review.

**SUMMARY:** The EPA's Office of Toxic Substances is announcing the availability of $1.0 million in funds for grants and cooperative agreements under the Toxic Release Inventory (TRI) Data Quality Assurance Program. The purpose of this program is to improve the quality and thus the utility of the TRI data by building at the State level the capacity to evaluate and assure the quality of facility submissions and the data base created from them. Eligible applicants are the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and federally-recognized Indian tribes. ("States" is used in this announcement to refer to all eligible applicants.) Awards to all recipients except Indian tribes will be made under authority of section 28 of the Toxic Substances Control Act (TSCA). Awards to federally-recognized Indian tribes will be made under section 10 of TSCA. All recipients must provide a match of 25 percent of the total project cost.

**DATES:** Applicants are requested to send a letter of intent to participate to EPA by May 4, 1990. Completed applications must be received at the EPA or postmarked by July 3, 1990 to be considered for award.

**ADDRESSES:** Letters of intent to participate in this program should be submitted to: Grants Program Coordinator, Economics and Technology Division (TS-779), Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Completed application packages should be submitted to: Grants Operations Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: TRI Data Quality Assurance Program.

**FOR FURTHER INFORMATION CONTACT:** Linda Wunderlich, (202) 382-3960, or Sam Sasnett, (202) 382-3821, Economics and Technology Division (TS-779), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA, also known as Title III of the Superfund Amendments and Reauthorization Act of 1986) requires manufacturing facilities meeting certain size and chemical use criteria to report annually to EPA and the States their environmental releases and transfers of more than 300 toxic chemicals and chemical categories. The law requires EPA to compile this information and make it available to the public by computer telecommunication and other means. Approximately 19,500 facilities submitted more than 74,000 chemical reports for 1987, the first year for which reporting was required. This information was compiled in a data base known as the Toxic Release Inventory (TRI), which will be updated annually. TRI is available on-line through the National Library of Medicine's TOXNET system, as well as through other electronic and non-electronic means. The 1988 TRI data are expected to be publicly available on-line in late spring of 1990. Facility submissions of 1989 reports are due to EPA and the States on July 1, 1990.

The TRI data represent a significant new source of information concerning toxic chemical releases into the environment and transfers from facility sites to other locations. EPA believes these data will prove invaluable in the development and implementation of State toxic substance control programs, particularly when analyzed in conjunction with other sources of environmental, chemical, and permit compliance data. In particular, TRI data will be useful for identifying geographic areas, facility types, particular facilities, or particular chemicals for further investigation or control action within the State. TRI data will also be useful to States for identifying opportunities for waste minimization and pollution prevention.

However, the maximum use of the TRI data cannot be achieved until EPA and the States can assure themselves and the public of the accuracy, completeness, and overall quality of the

data. Thus, data quality assurance activities are a necessary step in the use of TRI data for toxic chemical risk identification, communication, prevention, and elimination. EPA has established this program of limited financial assistance to help States develop the capacity to evaluate and assure the quality of the TRI data. Data management activities can be funded only to the extent that they support and are necessary for data quality assurance. Emergency planning, TRI data use activities, and risk communication are beyond the scope of this program at this time and cannot be considered for funding this year.

Although this assistance program is limited to TRI data quality assurance, States should be aware that other emergency planning and community right-to-know activities may be eligible for funding under a separate assistance program which EPA expects to announce later this spring. Under that program, EPA expects to award approximately $1.2 million to States to enhance their EPCRA (Title III) programs, particularly through enhancement of the effectiveness of their Local Emergency Planning Committees (LEPCs). EPA Regional preparedness and prevention coordinators will contact States when that program is available.

EPA sees the TRI data quality assurance effort as having three major components: assuring that the information submitted by facilities is accurate, assuring that the submitted data have been accurately transcribed into the TRI data base, and assessing the degree to which the reported data reflect the releases of the entire set of facilities subject to reporting.

To date, EPA has undertaken data quality initiatives in each of the three categories. Specific approaches EPA has used include: (1) Visiting randomly selected facilities (less than 1 percent) that filed reports to review their release calculations, (2) reviewing forms with questionable chemical identities and requesting, in writing, clarification or correction of the chemical being reported, (3) calling a sample (less than 5 percent) of facilities that have reported a release estimate identified as "suspect" by computer algorithm to request clarification and correction, (4) sending "notices of technical error" to facilities which failed to correctly complete certain parts of the form, (5) telephoning a sample of potentially subject facilities that did not report to determine whether they should have reported, and (6) sending data base printouts to facilities for their review to ensure reports were correctly entered.

While EPA may continue any or all of these initiatives, EPA intends to focus its future data quality efforts on ensuring that forms have been completed properly and that submitted information is transcribed accurately into the TRI data base. EPA believes that States, due to their proximity to and greater knowledge of the facilities within their jurisdiction, are in a better position than EPA to verify the accuracy of emissions estimates and other information submitted by facilities and to identify facilities that should have reported but failed to do so. This limited financial assistance is designed to enlist the help of States in this portion of the data quality effort.

States are encouraged to propose data quality assurance activities which extend or enhance the types of activities begun by EPA, for example, by auditing additional facilities within the State beyond EPA's limited sample. States may also propose alternative approaches to data quality, such as comparing TRI data submitted to the State to TRI data in EPA's data base, comparing release estimates reported to TRI to permit data or other information available to the State, or comparing TRI data across reporting years to identify inconsistencies or suspect submissions.

EPA has $1.0 million available for this program in fiscal year 1990 and expects to make approximately 10 awards of $75,000 to $150,000 each. Proposals for smaller-scale projects will be welcomed, while proposals in excess of the recommended amount will be considered only if the project's scope of work warrants the higher funding and if the project's benefits appear to outweigh the reduced potential to fund other candidates. Recipients must contribute a match of 25 percent of the total cost of the project, which may be reflected in allowable direct or indirect costs.

EPA asks that each State submit only one application for assistance under this program. No more than one award will be made to any one State under this program this year. State agencies or organizations wishing to submit an application should coordinate the development of their project proposal through their State EPCRA section 313 contact. States are strongly encouraged to work closely with the following EPA Regional EPCRA section 313 coordinators in the development of their proposals:

**Region I:** (CT, MA, ME, NH, RI, VT)
Contact: Dwight Peavey (617) 565–3230
**Region II:** (NY, NJ, PR, VI)
Contact: Nora Lopez or Ellen Banner (201) 906–6890
**Region III:** (DE, MD, PA, VA, WV, DC)
Contact: Kurt Elsner (215) 597–1260
**Region IV:** (AL, FL, GA, KY, MS, NC, SC, TN)
Contact: Jill Perry (404) 347–5014
**Region V:** (IL, IN, MI, MN, OH, WI)
Contact: Dennis Wesolowski (312) 353–5907
**Region VI:** (AR, LA, NM, OK, TX)
Contact: Gerald Carney (214) 655–7244
**–Region VII:** (IA, KS, MO, NE)
Contact: Ed Vest (913) 236–2806
**Region VIII:** (CO, MT, ND, SD, UT, WY)
Contact: Dianne Groh (303) 293–1735
**Region IX:** (AZ, CA, HI, NV, AS, GU, MP)
Contact: Kathleen Goforth (415) 556–5387
**Region X:** (AK, ID, OR, WA)
Contact: Philip Wong (206) 442–4016

EPA recognizes that States differ greatly in their current TRI data capabilities and thus in the likely sophistication of their project proposals. EPA will consider proposals from States at all levels of TRI data capability. Funds awarded under this program to States who are already undertaking TRI data quality activites may not be used as replacement funding for a pre-existing level of effort, but rather must be used to advance an existing program beyond its current capabilities, whether through expansion of existing activities or through development of new initiatives.

In evaluating applications for assistance, EPA will consider the following factors:

1. *Potential benefit and technical soundness.* EPA will evaluate the proposed activities for potential benefit, technical soundness, and feasibility of implementation. The evaluation will consider the significance of the identified or suspected data quality problem, the likelihood that the proposed activities will succeed in improving that aspect of data quality, and the degree to which the utility of the TRI data to the State, the EPA and the public will be improved by the data quality efforts. The evaluation will also consider whether the State has or will be able to obtain the staff expertise and data management equipment necessary to carry out the project. Potential benefit and technical soundness of the proposal will be weighed against cost.

2. *Integrated/multi-media approach.* EPA strongly urges States to propose projects which are multi-media in approach and which integrate information from diverse sources. However, innovative or particularly strong proposals involving a single

medium or data source will be considered if they are most appropriate for addressing the State's priority concerns. The degree of coordination and cooperation among various involved State agencies will be considered where relevant to the project.

3. *Likelihood of continuation.* Proposals will be evaluated to determine the likelihood that the programs will continue beyond the period of Federal funding. Each program proposal must include a detailed and specific presentation of the State's plans for continuation of the program activities. –

4. *Appropriateness for this program.* Proposals under this assistance program must be for the establishment of TRI data quality assurance programs to evaluate and improve the quality, and thus the utility, of the TRI data. TRI and other data management activities can only be funded to the extent that they support and are necessary for the data quality activities proposed. Emergency planning, risk communication, and TRI data use activities are outside the scope of this program and cannot be funded. States are encouraged to consult their EPA Regional EPCRA section 313 coordinator to ensure that the activities they propose fall within the scope of this assistance program.

5. *Priority need.* The applicant must demonstrate a "priority need" for the assistance as set forth in section 28 of TSCA. Determination of this priority need will consider, to the extent feasible: the extent to which chemical substances are manufactured, processed, used, and disposed of within the State; the extent of exposure in the State to humans and the environment to chemical substances and mixtures; and the seriousness of health effects within the State which are associated with chemical substances and mixtures. EPA will consider the number of TRI reports received by the State in the evaluation of priority need; however, comparatively few TRI submissions will not necessarily prevent an applicant from receiving an award.

Proposals must also provide for the transfer of data quality improvements resulting from the project to the national data base maintained by EPA. The mechanism of such transfer need not be specified in the proposal but will be negotiated between the State and EPA prior to award.

To apply for funds, States:

1. Are requested to submit a letter of intent to participate to the Grants Program Coordinator, Economics and Technology Division (TS–779), USEPA, 401 M St., SW., Washington, DC 20460 by May 4, 1990. An application package containing an EPA application form and additional guidance for completing theapplication will be sent to all States submitting a letter of intent to participate.

2. Must submit a complete application package to the Grants Operations Branch, Grants Administration Division (PM-216F), USEPA, 401 M St., SW., Washington, DC 20460. Applications received or postmarked after July 3, 1990 will not be considered for an award.

The Catalog of Federal Domestic Assistance number assigned to this program is 66.705. This program is eligible for intergovernmental review under Executive Order 12372 (E.O. 12372) and is subject to the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. States' Single Point of Contact (SPOC) must notify the following office in writing within 30 days of this publication whether their States' official E.O. 12372 process will review applications under this program: Grants Policies and Procedures Branch, Grants Administration Division (PM–216F), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: Corinne Allison.

Applicants must contact their State's SPOC for intergovernmental review as early as possible to determine if the program is subject to the State's official E.O. 12372 process and what material must be submitted to the SPOC for review. In addition, applications for projects within a metropolitan area must be sent to the areawide/regional/local planning agency designated to perform metropolitan or regional planning for the area for their review. SPOCs and other reviewers should send their comments concerning applications to the Grants Operations Branch listed under the **ADDRESSES** unit no later than 60 days after receipt of the application or other material for review.

Dated: March 28, 1990.

**Linda J. Fisher,**

*Assistant Administrator for Pesticides and Toxic Substances.*

[FR Doc: 90–7773 Filed 4–3–90; 8:45 a.m.]

BILLING CODE 6560–50–D

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**[OPP–100050A; FRL–3709–5]**

## Syracuse Research Corporation; Transfer of Data

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

**ACTION:** Notice.

**SUMMARY:** This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Syracuse Research Corporation (SRC) has been awarded a contract to perform work for the EPA Office of Environmental Criteria and Assessment and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SRC consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), respectively. This action will enable SRC to fulfill the obligations of the contract and this notice serves to notify affected persons.

**DATES:** SRC will be given access to this information no sooner than April 9, 1990.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Catherine S. Grimes, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 212, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–4460.

**SUPPLEMENTARY INFORMATION:** This notice is to amend the list of chemicals that appeared in a **Federal Register** notice of January 13, 1988 (53 FR 794). The pesticide chemicals listed below are in addition to those mentioned in the above **Federal Register** notice. SRC will be preparing and updating environmental effects documents, including aquatic toxicity and environmental fate and transport. Other chemicals may be included in SRC's work later in this contract. Readers may contact the person named above in approximately 1 year to learn if chemicals other than those on the list below and the original listing of January 13, 1988, will be involved in this contract.

Acetone
Anthracene (PAH-TSD)
Benzo(g,h,i)perylene (PAH-TSD)
Benzo(k)fluoranthene (PAH-TSD)
Benzyl alcohol
Biphenyl-1,1
Bromobenzene
Bromochloromethane
Bromo-1-phenoxy-4-benzene
Carbofuran
Dibromoethane, 1,2-
Dichloroethylene, 1,2-(mix iso)
Dichloroethylene, cis 1,2-

O,O-Dimethyl-O-p-nitropheny phosphorothioate (methyl parathion)
Heptane
Hexane
Hydrazine
Methylene-bis-(2-chloroaniline), 4,4-
Methylphenol,4-
Methylparathion
Mono chlorodibenzo-p-dioxins
Nitroaniline-2
Nitrophenol-2
Oxirane
Phosgene
Plutonium
Propenoic Acid
Pyrene (PAH-TSD)
RDX (Cyclonite)
Styrene
Toluene diisocyanate
Trinitrobenzene, 1,3,5-
Trinitrophenol, 2,4,6-
Trinitrophenol-2,4,D

The Office of Environmental Criteria and Assessment and the Office of Pesticide Programs have jointly determined that Contract No. 68–C3–3521, involves works that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), the contract with SRC prohibits use of the information for any purpose other than the purposes specified in the contract, prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business, and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SRC has previously submitted for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Environmental Criteria and Assessment. All information supplied to SRC by EPA for use in connection with this contract will be returned to EPA when SRC has completed its work.

Dated: March 16, 1990.

**Edwin F. Tinsworth,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. 90–7479; Filed 4–3–90; 8:45 am]

BILLING CODE 6550–50–D

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**[OPP–30301; FRL 3658–8]**

## Certain Companies; Applications to Register Pesticide Products

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

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Comment by May 4, 1990.

**ADDRESSES:** By mail submit comments identified by the document control number [OPP–30301] and the registration/file number, attention Product Manager (PM) named in each application at the following address:

Public Docket and Freedom of Information Section, Field Operations Programs (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Environmental Protection Agency, Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Registration Division (H7505C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

| Product Manager | Office location/ telephone number | Address |
|---|---|---|
| PM 12 Dennis Edwards | Rm. 202, CM #2 (703–557–2386). | Environmental Protection Agency 1921 Jefferson Davis Hwy Arlington, VA 22202 |
| PM 21 Susan Lewis | Rm. 229, CM #2 (703–557–1900). | -Do- |

**SUPPLEMENTARY INFORMATION:** EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

### Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 464-ALR. Applicant: Dow Chemical Co., PO Box 1706, Midland, MI 48641. Product name: Butathiofos 4G Granular Insecticide. Insecticide. Active ingredient: *O*-(2-(1,1-dimethylethyl)-5-pyrimidinyl) *O,O*-diethyl phosphorothioate(1) 4.0%. Proposed classification/Use: Restricted. For control of rootworms and certain other soil pests on field corn. (PM 12)

2. File Symbol: 464-ALE. Applicant: Dow Chemical Co. Product name: Butathiofos 2G Granular Insecticide. Insecticide. Active ingredient: *O*-(2-(1,1-dimethylethyl)-5-pyrimidinyl) *O,O*-diethyl phosphorothioate(1) 2.0%. Proposed classification/Use: Restricted. For control of rootworms and certain other soil pests on field corn. (PM 12)

3. File Symbol: 10182-EIG. Applicant: ICI Americas Inc., Agricultural Products, Wilmington, DE 19897. Product name: ICIA0523 1SC Fungicide. Fungicide. Active ingredient: Hexacanazole alpha-butyl-alpha-(2,4-dichlorophenyl)-1*H*-1,2,4-triazole-1-ethanol 10.12%. Proposed classification/Use: None. For control of powdery mildew on greenhouse ornamentals. (PM 21)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the

extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703–557–3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: March 16, 1990.

Anne E. Lindsay,

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 90–7341 Filed 4–3–90; 8:45 am]

BILLING CODE 6560–50–D

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[OPTS–59884; FRL 3734–3]

## Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

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

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13,1983 ( 48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 16 such PMN(s) and provides a summary of each.

**DATES:** Close of Review Periods:

*Y 90–136, 90–137, 90–138,* March 21, 1990.

*Y 90–139, 90–140, 90–141, 90–143, 90–144, 90–145, 90–146, 90–147, 90–148,* March 23, 1990.

*Y 90–149, 90–150, 90–151, 90–152,* March 25, 1990.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–545, 401 M Street, SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

### Y 90–136

*Importer.* Basf Corporation.

*Chemical.* (G) Disubstituted heterocycle, polymer with unsaturated hydrocarbon.

*Use/Import.* (G) Leather auxiliary. Import range: Confidential.

### Y 90–137

*Manufacturer.* Freeman Chemical Corporation.

*Chemical.* (G) Water-reducible alkyd.

*Use/Production.* (S) Water-reducible alkyd resin for primer application. Prod. range: Confidential.

### Y 90–138

*Manufacturer.* Freeman Chemical Corporation.

*Chemical.* (G) Saturated polyester polyol.

*Use/Production.* (S) High solids baking resin for electrostatic spray. Prod. range: Confidential.

### Y 90–139

*Manufacturer.* Confidential.

*Chemical.* (G) Hydroxy functional acrylic polymer.

*Use/Production.* (G) Coating. Prod. range: Confidential.

### Y 90–140

*Manufacturer.* Confidential.

*Chemical.* (G) Hydroxy functional acrylic polymer.

*Use/Production.* (G) Coating. Prod. range: Confidential.

### Y 90–141

*Manufacturer.* Confidential.

*Chemical.* (G) Hydroxy functional acrylic polymer.

*Use/Production.* (G) Coating. Prod. range: Confidential.

### Y 90–143

*Manufacturer.* Confidential.

*Chemical.* (G) Hydroxy functional acrylic polymer.

*Use/Production.* (G) Coating. Prod. range: Confidential.

### Y 90–144

*Manufacturer.* Confidential.

*Chemical.* (G) Hydroxy functional acrylic polymer.

*Use/Production.* (G) Coating. Prod. range: Confidential.

### Y 90–145

*Manufacturer.* Confidential.

*Chemical.* (G) Hydroxy functional acrylic polymer.

*Use/Production.* (G) Coating. Prod. range: Confidential.

### Y 90–146

*Manufacturer.* Confidential.

*Chemical.* (G) Hydroxy functional acrylic polymer.

*Use/Production.* (G) Coating. Prod. range: Confidential.

### Y 90–147

*Manufacturer.* Confidential.

*Chemical.* (G) Hydroxy functional acrylic polymer.

*Use/Production.* (G) Coating. Prod. range: Confidential.

### Y 90–148

*Manufacturer.* Confidential.

*Chemical.* (G) Hydroxy functional acrylic polymer.

*Use/Production.* (G) Coating. Prod. range: Confidential.

### Y 90–149

*Manufacturer.* S.C. Johnson & Sons, Inc.

*Chemical.* (G) Aqueous acrylic copolymer and salts thereof.

*Use/Production.* (G) Aqueous emulsion polymer. Prod. range: Confidential.

### Y 90–150

*Manufacturer.* S.C. Johnson & Sons, Inc.

*Chemical.* (G) Aqueous acrylic copolymer and salts thereof.

*Use/Production.* (G) Aqueous emulsion polymer. Prod. range: Confidential.

### Y 90–151

*Manufacturer.* S.C. Johnson & Sons, Inc.

*Chemical.* (G) Aqueous acrylic copolymer and salts thereof.

*Use/Production.* (G) Aqueous emulsion polymer. Prod. range: Confidential.

### Y 90–152

*Importer.* MTC America, Inc.

*Chemical.* (G) Polyester graft copolymer.

*Use/Production.* (S) Powder coatings. Prod. range: Confidential.

Dated: March 27, 1990.

Steven Newburg-Rinn,

*Acting Director, Information Management Division, Office of Toxic Substances*

[FR Doc. 90-7480 Filed 4-3-90; 8:45 am]

BILLING CODE 6560-50-D

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[OPP-00287; FRL-3715-3]

## Pesticide Information Network; Availability for Use by the General Public

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

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of the Pesticide Information Network (PIN) as of November 30, 1989. The PIN, an expansion of the Pesticide Monitoring Inventory (PMI), is an interactive data base providing current pesticide information. The information sources available through the PIN are the PMI, the Restricted Use Products file and the Chemical Index.

**FOR FURTHER INFORMATION CONTACT:**

For Brochures, Fact Sheets, or Pesticide Monitoring Project Forms, contact: Public Information Center (PIC), PM-11B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 382-2080.

For technical information: The User Support Staff: Constance A. Hoheisel (703-557-5455), or Leslie Davies-Hilliard (703-557-7499), Environmental Protection Agency, Office of Pesticide Programs, EFED/EFGWB/Pesticide Program Monitoring Section (H7507C), 401 M St., SW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** The Pesticide Information Network (PIN), is an expansion of the Pesticide Monitoring Inventory (PMI), operating concept.

Currently the PIN consists of three files, the PMI, the Restricted Use Product file, and the Chemical Index.

The PMI is a collection of monitoring projects being performed by Federal, State, and local agencies, private institutions, and industry. The PMI contains a short synopsis of each pesticide monitoring project, including chemicals, substrates, and location. It also lists the name, address, and telephone number of a person to contact to gain additional information on a specific project. The information provided can be tailored to the user's needs. Users may search for projects by chemical, substrate, EPA Region, State, and various other criteria, and download the results of their search to their own computer.

While the Office of Pesticide Programs is providing the support which will allow the PMI to function, its growth and its ultimate value depends largely upon users who provide monitoring projects for inclusion into the data base. To add your project to the PMI, contact any member of the User Support Staff or the Public Information Center listed under the **FOR FURTHER INFORMATION CONTACT** unit above to obtain Pesticide Monitoring Project Forms.

The PMI allows the user community to tap a broad base of information that will enhance their own monitoring programs, eliminate duplicative efforts, and encourage the development of cooperative, cost effective programs. –

The Restricted Use Product File (RUP), is maintained by the Registration Support Branch of the Office of Pesticide Programs. It lists, by active ingredient, all products classified as restricted use under 40 CFR part 152, subpart I. Product information can be obtained by searching the chemical name of the active ingredient, CAS Number, EPA Registration Number or revision date. Information on the actions taken and criteria used for the restricted use classification are also provided and can be downloaded to the user's computer. The RUP is updated on the first of each month.

The Chemical Index is a cross-reference of the chemicals contained in the PMI and RUP. It provides the chemical name on which the data base must be searched, synonyms, CAS Number, class, category, and file location.

The PIN is located on a personal computer and is accessible by dataphone similar to the PC to PC bulletin boards that are used to share information. It is completely menu driven and it is on-line 24 hours per day, 7 days a week. To access the PIN, users must have a computer/modem or terminal capable of being set at the following parameters:

*Baud rate*: 1200
*Databits*: 7
*Stop*: 1
*Parity*: Even
*Duplex*: Full
*Phone number*: (703) 557-1919; FTS 8-557-1919.

Those who could benefit from using the PIN include State and Federal regulatory agencies, EPA Regional Offices, environmental groups, pesticide-associated industry, researchers, and environmental and health officials. As the PIN continues to expand, pesticide information will be included that will provide EPA and the regulatory community with additional tools to evaluate the effectiveness of regulatory actions, illustrate the environmental results of regulatory actions, and identify unanticipated, emerging health and environmental problems.

Dated: March 15, 1990.

Edwin F. Tinsworth,

*Acting Director, Office of Pesticide Programs.*

[FR Doc. 90-7219 Filed 4-3-90; 8:45 a.m.]

BILLING CODE 6560-50-D

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[OPP-42050D; FRL-3617-8]

## Illinois State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

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

**ACTION:** Notice of approval of amendments to the State Plan.

**SUMMARY:** In the Federal Register of July 19, 1989 (54 FR 30259), the Agency announced its intention to approve certain amendments to the Illinois State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides. The comment period for the proposed amendments ended August 18, 1989; no comments were received. This notice announces the Agency's approval of Illinois' proposed amendments.

**DATES:** This approval is effective April 4, 1990.

**ADDRESSES:** Copies of the revised Illinois State Plan are available for review at the following locations.

1. Pesticides and Toxic Substances Branch, U.S. Environmental Protection Agency, Region V, 536 South Clark St., 7th Floor, Federal Building, Chicago, IL 60605
2. Bureau of Plant and Apiary Protection, Illinois Department of Agriculture, State Fairgrounds, Springfield, IL 62794-9281.

**FOR FURTHER INFORMATION CONTACT:** Lavarre D. Uhlken, Pesticides and Toxic Substances Branch (5SPT-7), Environmental Protection Agency, Region V, 230 South Dearborn St., Chicago, IL 60604, (312) 886-6016

**SUPPLEMENTARY INFORMATION:** The Illinois State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides was approved by notice in the Federal Register of July 26, 1978 (43 FR 32327). Illinois requested to amend its Plan by revising recordkeeping requirements for commercial applicators and updating

private applicator training, examination, and recertification procedures.

In addition, Illinois proposed to further subdivide commercial applicator certification categories in: (1) Industrial, Institutional, Structural and Health Related Pest Control, and (2) Ornamental and Turf Pest Control. A new commercial certification category, Soil Fumigation Pest Control has been added. Private applicators engaged in grain fumigation will be required to obtain a special grain fumigation certification in addition to their private applicator certification.

The Agency received no comments on the proposed amendments and hereby approves them.

Dated: March 22, 1990.

**Frank M. Covington,**

*Acting Regional Administrator, Region V.*

[FR Doc. 90-7637 Filed 4-3-90; 8:45 am]

BILLING CODE 6560-50-D

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[OPP-42026C; FRL-3712-1]

## Indiana State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

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

**ACTION:** Notice of approval of amendments to the State Plan.

**SUMMARY:** In the Federal Register of July 19, 1989 (54 FR 30260), the Agency announced its intention to approve certain amendments to the Indiana State Plan for the Certification of Commercial and Private Applicators of Restricted Use Pesticides. The comment period for the proposed amendments ended August 18, 1989; no comments were received. This notice announces the Agency's approval of Indiana's proposed amendments.

**DATES:** This approval is effective April 4, 1990.

**ADDRESSES:** Copies of the revised Indiana State Plan are available for review at the following addresses:

1. Pesticides and Toxic Substances Branch, U.S. Environmental Protection Agency, Region V, 536 South Clark St., 7th Floor, Federal Building, Chicago, IL 60605
2. Pesticide Administrator, Indiana State Chemist Office, Department of Biochemistry, Purdue University, West Lafayette, IN 47907.

**FOR FURTHER INFORMATION CONTACT:** Lavarre D. Uhlken, Pesticides and Toxic Substances Branch (5SPT-7), Environmental Protection Agency, Region V, 230 South Dearborn St., Chicago, IL 60604, (312) 886-6016.

**SUPPLEMENTARY INFORMATION:** The Indiana State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides was approved by notice in the Federal Register of November 26, 1976 (41 FR 52101). Indiana requested to amend its Plan by upgrading its certification program by establishing a new aerial category for commercial applicators and further subdividing the commercial applicator category Industrial, Institutional, Structural, and Health Related Pest Control to include the subcategories food industry fumigation and grain fumigation. Persons working under the direct supervision of a commercial applicator in Wood Destroying Pest Control and Turf Pest Control must successfully complete a comprehensive registered technician program. Special certification for private applicators is now required for the use of space and commodity fumigants.

In addition, the nonreader certification provision has been eliminated and, unless the State Lead Agency is required by court order, the nonreader will not be eligible for certification.

The Agency received no comments on the proposed amendments and hereby approves them.

Dated: March 22, 1990.

**Frank M. Covington,**

*Acting Regional Administrator, Region V.*

[FR Doc 90-7636 Filed 4-3-90; 8:45 am]

BILLING CODE 6560-50-D

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[OPP-42016D; FRL-3711-7]

## Michigan State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

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

**ACTION:** Notice of approval of amendments to the State Plan.

**SUMMARY:** In the Federal Register of July 19, 1989 (54 FR 30261), the Agency announced its intention to approve certain amendments to the Michigan State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides. The comment period for the proposed amendments ended August 18, 1989. One comment was received from the Michigan Veterinary Medical Association. However, this comment applied to a regulation under development, not the amendment being proposed by Michigan. This notice announces the Agency's approval of Michigan's proposed amendments.

**DATES:** This approval is effective April 4, 1990.

**ADDRESSES:** Copies of the revised Michigan State Plan are available for review at the following locations:

1. Pesticides and Toxic Substances Branch, U.S. Environmental Protection Agency, Region V, 536 South Clark St., 7th Floor, Federal Building, Chicago, IL 60605
2. Pesticide and Plant Pest Management Division, Michigan Department of Agriculture, 611 West Ottawa, North Ottawa Tower, 4th Floor, Lansing, MI 48909.

**FOR FURTHER INFORMATION CONTACT:** Lavarre D. Uhlken, Pesticides and Toxic Substances Branch (5SPT-7), Environmental Protection Agency, Region V, 230 South Dearborn St., Chicago, IL 60604, (312) 886-6016.

**SUPPLEMENTARY INFORMATION:** The Michigan State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides was approved by notice in the Federal Register of February 15, 1977 (42 FR 9203). Michigan requested to amend its Plan by adding two subcategories of commercial applicator certification, microbial pests in swimming pools and microbial pests in cooling towers to the Aquatic Pest Control Category. The Industrial, Institutional, Structural, and Health Related Pest Control Category was expanded to include vertebrate pest control and interior plantscape subcategories. A separate turf subcategory was added to the Ornamental and Turf Pest Control category. Standards of competency for private and commercial applicators were amended for grain and soil fumigation.

In addition, Michigan has modified its mechanisms to recertify private and commercial applicators by adding continuing certification credits as an alternative to re-examination.

The Agency hereby approves the amendments to the Michigan State Plan.

Dated: March 22, 1990.

**Frank M. Covington,**

*Acting Regional Administrator, Region V.*

[FR Doc. 90-7635 Filed 4-3-90; 8:45 am]

BILLING CODE 6560-50-D

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[OPP-42043E; FRL-3618-6]

## Minnesota State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

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

**ACTION:** Notice of approval of amendments to the State Plan.

**SUMMARY:** In the Federal Register of July 19, 1989 (54 FR 30262), the Agency announced its intention to approve certain amendments to the Minnesota State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides. The comment period for the proposed amendments ended August 18, 1989. One comment was received from the American Veterinary Medical Association. However, this comment applied to a regulation under development, not the amendment being proposed by Minnesota. This notice announces the Agency's approval of Minnesota's proposed amendments.

**DATES:** This approval is effective April 4, 1990.

**ADDRESSES:** Copies of the revised Minnesota State Plan are available for review at the following locations:

1. Pesticides and Toxic Substances Branch, U.S. Environmental Protection Agency, Region V, 536 South Clark St., 7th Floor, Federal Building, Chicago, IL 60605
2. Agronomy Services Division, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107.

**FOR FURTHER INFORMATION CONTACT:** Lavarre D. Uhlken, Pesticides and Toxic Substances Branch (5SPT-7), Environmental Protection Agency, Region V, 230 South Dearborn St., Chicago, IL 60604, (312) 886-6016.

**SUPPLEMENTARY INFORMATION:** The Minnesota State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides was approved by notice in the Federal Register of September 27, 1978 (43 FR 43765). Minnesota requested to amend its Plan to upgrade and expand its certification and recertification requirements for private and commercial applicators. Private applicators would be required to pass a written examination or complete a correspondence course to become certified. All commercial applicators who apply restricted use pesticides will require certification, as direct supervision of uncertified applicators has been eliminated. Annual recertification is now required for all commercial applicators except those in the Agricultural Pest Control Category. Those certified in the Agricultural Pest Control Category will have a 3-year certification period.

In addition, Minnesota proposed to establish a fumigation subcategory and a wood preservative subcategory in the Industrial, Institutional, Structural, and Health Related Pest Control Category.

The Agency hereby approves the amendments to the Minnesota State Plan.

Dated: March 22, 1990.

**Frank M. Covington,**

*Acting Regional Administrator, Region V.*

[FR Doc. 90-7639 Filed 4-3-90; 8:45 am]

BILLING CODE 6560-50-D

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**[OPP-42042C; FRL-3711-8]**

## Ohio State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

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

**ACTION:** Notice of approval of amendments to the State Plan.

**SUMMARY:** In the Federal Register of July 19, 1989 (54 FR 30262), the Agency announced its intention to approve certain amendments to the Ohio State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides. The comment period for the proposed amendments ended August 18, 1989. One comment was received from the American Veterinary Medical Association. However, this comment applied to a regulation under development, not the amendment being proposed by Ohio. This notice announces the Agency's approval of Ohio's proposed amendments.

**DATES:** This approval is effective April 14, 1990.

**ADDRESSES:** Copies of the revised Ohio State Plan are available for review at the following locations:

1. Pesticides and Toxic Substances Branch, U.S. Environmental Protection Agency, Region V, 536 South Clark St., 7th Floor, Federal Building, Chicago, IL 60605
2. Pesticide Regulation Section, Ohio Department of Agriculture, 8995 East Main St., Reynoldsburg, OH 43068.

**FOR FURTHER INFORMATION CONTACT:** Lavarre D. Uhlken, Pesticides and Toxic Substances Branch (5SPT-7), Environmental Protection Agency, Region V, 230 South Dearborn St., Chicago, IL 60604, (312) 886-6016.

**SUPPLEMENTARY INFORMATION:** The Ohio State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides was approved by notice in the Federal Register of April 13, 1977 (42 FR 19377). Ohio requested to amend its Plan by upgrading general competency standards for the certification and recertification of commercial and private applicators. Included were the demonstration of practical knowledge on (1) ground water contamination by pesticides and resource protection and (2) protection of endangered animals and plants as designated by the Endangered Species Act.

In addition, Ohio proposed to subcategorize the following commercial applicator categories: (1) The Forest Pest Control Category adds the subcategory wood preservation, (2) the Ornamental Plant and Shade Tree Pest Control Category adds the subcategory interior plantscape, and (3) the Specialized Pest Control Category adds the subcategories bee pest control and greenhouse pest control. Wood Preservatives Pest Control was proposed to be added to the 14 existing categories for private applicators.

Ohio proposed to upgrade its recertification training requirements to include minimum training credits to be accumulated during the last 2 years of an individual's 3-year certification period, and would be applicable to commercial and private applicators.

The Agency hereby approves the amendments to the Ohio State Plan.

Dated: March 22, 1990.

**Frank M. Covington,**

*Acting Regional Administrator, Region V.*

[FR Doc. 90-7634 Filed 4-3-90; 8:45 am]

BILLING CODE 6560-50-D

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**[OPP-42052E; FRL-3617-9]**

## Wisconsin State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

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

**ACTION:** Notice of approval of amendments to the State Plan.

**SUMMARY:** In the Federal Register of July 19, 1989 (54 FR 30262), the Agency announced its intention to approve certain amendments to the Wisconsin State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides. The comment period for the proposed amendments ended August 18, 1989; no comments were received. This notice announces the Agency's approval of Wisconsin's proposed amendments.

**DATES:** This approval is effective April 4, 1990.

**ADDRESSES:** Copies of the revised Wisconsin State Plan are available for review at the following locations:

1. Pesticides and Toxic Substances Branch, U.S. Environmental Protection Agency, Region V, 536 South Clark St.,

7th Floor, Federal Building, Chicago, IL 60605
2. Agricultural Resource Management Division, Wisconsin Department of Agriculture, Trade and Consumer Protection, 801 West Badger Road, Madison, WI 53708.

**FOR FURTHER INFORMATION CONTACT:** Lavarre D. Uhlken, Pesticides and Toxic Substances Branch (5SPT–7), U.S. Environmental Protection Agency, Region V, 230 South Dearborn St., Chicago, IL 60604, (312) 886–6016.

**SUPPLEMENTARY INFORMATION:** The Wisconsin State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides was approved by notice in the Federal Register of November 28, 1978 (43 FR 55462). Wisconsin requested to amend its Plan to upgrade its certification program by establishing a subcategory for wood preservation under the existing commercial applicator category; Industrial, Institutional, Structural, and Health Related Pest Control and by establishing a new commercial applicator category for aerial application. Certification of both commercial and private applicators was proposed for all who apply restricted use pesticides, thus eliminating direct supervision of uncertified applicators.

The Agency hereby approves the amendments to the Wisconsin State Plan.

Dated: March 22, 1990.

**Frank M. Covington,**

*Acting Regional Administrator, Region V.*

[FR Doc 90–7638 Filed 4–3–90; 8:45 am]

**BILLING CODE 6560–50–D**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 90–513]**

### Advisory Committee on Advanced Television Service Planning Subcommittee Meeting

March 28, 1990.

A meeting of the Planning Subcommittee of the Advisory Committee on Advanced Television Service will be held on: May 11, 1990, 10 a.m., Commission Meeting Room (room 856), 1919 M Street NW., Washington, DC.

The purpose of this meeting to receive the reports of the Subcommittee's working parties and to review the work statement for the fourth period of Planning Subcommittee activities.

The agenda for the meeting is as follows:

1. Call to Order by the Chairman
2. Adoption of the Minutes of the Sixth Meeting
3. Introductory Remarks
4. Review of the Work Statement
5. Status Reports by the Working Party and Advisory Group Chairs
6. Other Business
7. Date and Location of the Next Subcommittee Meeting
8. Adjournment

This meeting is open to the public.

Parties may submit written statements prior to or at the time of the meeting. Oral statements and discussion will be permitted under the direction of the Subcommittee Chairman.

Any questions regarding this meeting should be directed to Joseph A. Flaherty at (212) 975–2213 or William Hassinger at (202) 632–6460.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 90–7689 Filed 4–3–90; 8:45 am]

**BILLING CODE 6712–01–M**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Statement of Policy on Assistance to Operating Insured Banks and Savings Associations

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

**ACTION:** Adoption of statement of policy.

**SUMMARY:** This statement of policy revises the FDIC's current policy statement on assistance to operating insured banks (which was issued in 1986) to reflect certain amendments to section 13(c) of the Federal Deposit Insurance Act (the "FDIA") and the addition of a new section 13(k)(5) to the FDIA, as enacted in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. In addition, certain criteria in the 1986 policy statement have been revised or removed to accord with the FDIC's experience with assistance transactions under section 13(c) of the FDIA. The criteria in this policy statement apply to both operating insured banks and savings associations.

**EFFECTIVE DATE:** The statement of policy is effective April 4, 1990.

**FOR FURTHER INFORMATION CONTACT:** Daniel M. Gautsch, Chief, Assistance Transactions Section, Division of Supervision (202) 898–6912; Ross S. Delston, Assistant General Counsel, Assisted Acquisitions and Transactions Section, Legal Division (202) 898–3714; Michael B. Phillips, Senior Attorney, Assisted Acquisitions and Transactions section, Legal Division (202) 906–6755, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** The text of the statement of policy follows:

**FDIC Statement of Policy on Assistance to Operating Insured Banks and Savings Associations**

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") amended section 13 of the Federal Deposit Insurance Act, as amended (the "FDIA"), 12 U.S.C. 1823, to broaden the authority of the Federal Deposit Insurance Corporation (the "FDIC") under section 13(c) of the FDIA to provide assistance to operating savings associations that are members of the Savings Association Insurance Fund (the "SAIF"), in addition to assisting operating banks that are members of the Bank Insurance Fund (the BIF").

Given the importance of the statutory revisions to section 13 of the FDIA, the Board of Directors of the FDIC has concluded that the FDIC's current policy for assistance to operating insured banks (the "Operating Bank Assistance Policy Statement"), which was published in the Federal Register on December 8, 1986,[1] must be revised. This policy statement replaces the Operating Bank Assistance Policy Statement.

Certain criteria in the Operating Bank Assistance Policy Statement have been revised or removed to accord with the FDIC's experience since 1986 with assistance transactions under section 13(c) of the FDIA.

**I. Introduction**

Under section 13(c) of the FDIA, the FDIC may provide financial assistance to operating insured banks and savings associations: (1) To prevent the "default" of insured depository institutions or to assist insured depository institutions that are "in danger of default," [2] or (2) if, when severe financial conditions exist that threaten the stability of a significant number of insured institutions or of insured institutions possessing significant financial resources, to lessen the risk to the FDIC posed by such insured institutions under such threat of instability.

In order for the FDIC to provide assistance to any operating insured

[1] 51 FR 44122 (1986).

[2] The terms "default" and "in danger of default" are defined in section 3(x) of the FDIA, 12 U.S.C. 1813(x).

bank or savings association, the FDIC Board of Directors must determine that either: (1) The amount of the assistance is less than the cost of liquidating (including paying the insured accounts of) the institution or (2) the continued operation of the institution is essential to provide adequate depository services in its community.[3]

Assistance to operating insured banks and savings associations may be provided directly to the institution in danger of default, to another institution qualified to merge with or acquire the failing institution, or to a holding company or other qualified person or entity to facilitate its acquisition of the institution.

Proposals for assistance for operating banks and savings associations under section 13 of the FDIA will be reviewed by the FDIC under the criteria listed in Section III of this policy statement.

Prior to FY 1992, proposals for assistance with respect to operating savings associations may be funded by the Resolution Trust Corporation (the "RTC"). Under Section 11 of the FDIA, until the SAIF has adequate funding (which will not be until FY 1992), the FDIC may request that the RTC, with RTC Oversight Board approval, provide necessary funds for the SAIF's financial operations.

## II. Section 13(k)(5) of the FDIA

Section 13(k)(5) of the FDIA (12 U.S.C. 1823(k)(5)) provides that the FDIC shall consider proposals for financial assistance by eligible SAIF members before grounds exist for appointment of a conservator or receiver for such institutions. Proposals under section 13(k)(5) must meet the nine criteria of the statute, as follows:[4]

(1) Grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the institution's "tangible capital" is increased.[5]

(2) It is unlikely that the institution can achieve positive tangible capital without assistance.

(3) Assistance by the FDIC likely would lessen the risk to the SAIF.

(4) Before the enactment of FIRREA, the institution was solvent under applicable regulatory accounting principles but had negative tangible capital.[6]

(5) The negative tangible capital position of the institution is substantially attributable to supervisory transactions initiated by the Federal Home Loan Bank Board (the "FHLBB") or the Federal Savings and Loan Insurance Corporation (the "FSLIC").

(6) The institution is a "qualified thrift lender" [7] or would be a qualified thrift lender if commercial real estate owned and nonperforming commercial loans acquired in supervisory transactions initiated by the FHLBB or the FSLIC were excluded from the institution's total assets.

(7) The appropriate Federal banking agency has determined that the institution's management is competent and in compliance with applicable laws and regulatory directives.

(8) The institution's management did not engage in insider dealing, speculative practices, or other activities that jeopardized the institution's safety or soundness or contributed to its impaired capital position.

(9) The institution's offices are located in an "economically depressed region".[8]

Applicants under section 13(k)(5) generally will be required to meet all fourteen criteria listed in Section III of this policy statement, in addition to the aforementioned statutory criteria in section 13(k)(5). However, with respect to criterion (5) in section III of this policy statement, the FDIC will presume that management is adequate, based on the determination of the Office of Thrift Supervision, but will retain discretion to review the merits of individual directors and senior ranking officers.[9]

Assistance proposals with respect to SAIF member institutions under section 13(k)(5) that do not meet all nine of the aforementioned criteria may be submitted to the FDIC for consideration under section 13(c).

## III. Criteria for the FDIC's Consideration of Proposals for Assistance To Operating Insured Banks and Savings Associations

An assistance proposal for an operating insured bank or savings association should meet the following criteria (except where there are compelling reasons to the contrary):

(1) The cost to the FDIC of the proposal clearly must be less than other available alternatives and still provide for a reasonable assurance of the future viability of the institution.[10]

(2) The proposal must provide for sufficient tangible capitalization, through capital infusions from outside private investment sources, to meet the regulatory capital standards of the appropriate Federal banking agency.[11]

(3) The proposal must ensure that the assistance will benefit the institution and the FDIC and not be diverted to other purposes. If the assisted institution is a subsidiary of a holding company, the proposal should be structured so that assistance is not given to the holding company, except where compelling reasons require it, and then only when the holding company acts solely as a conduit for immediately providing the entire amount of assistance to the failing insured depository institution.[12]

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[3] *See* section 13(c)(4)(A) of the FDIA, 12 U.S.C. 1823(c)(4)(A).

[4] The nine criteria for proposals submitted under section 13(k)(5) of the FDIA are listed in subsections (k)(5)(A)(i)(I)–(III) and (A)(ii)(I)–(IV) of Section 13 of the FDIA, 12 U.S.C. 1823(k)(5)(A)(i)(I)–(III) and (A)(ii)(I)–(VI).

[5] "Tangible capital" is defined in section 5(t)(9)(C) of the Home Owners' Loan Act, as amended (the "HOLA"), 12 U.S.C. 1464(t)(9)(C).

[6] *See* section 13(k)(5)(A)(ii)(I) of the FDIA, 12 U.S.C. 1823(k)(5)(A)(ii)(I).

[7] *See* section 10(m) of the HOLA, 12 U.S.C. 1467a(m), which was amended by Section 301 of FIRREA.

[8] *See* Section 13(k)(5)(C) of the FDIA, 12 U.S.C. 1823(k)(5)(C). The FDIC has issued an interim rule at 12 CFR part 357 (*See* 55 FR 11160 (1990)) that identifies eight states that qualify within the definition of an "economically depressed region" under section 13(k)(5)(C). Those states are: Alaska, Arizona, Arkansas, Colorado, Louisiana, New Mexico, Oklahoma, and Texas.

[9] *See* section 13(k)(5)(A)(ii)(IV) of the FDIA, 12 U.S.C. 1823(k)(5)(A)(ii)(IV).

[10] The FDIC bases its cost analysis on an estimation of two factors: (a) the amount by which the liabilities of the institution exceed the value of the institution's asets, and (b) the portion of this deficit that would be incurred by the FDIC (or the RTC under section 11(a)(6)(H) of the FDIA, 12 U.S.C. 1821(a)(6)(H)), in the event of a payoff. In calculating the cost of the assistance, the FDIC must include (a) The immediate and long-term obligations of the FDIC (or the RTC under section 11(a)(6)(H) of the FDIA) with respect to such assistance, including contingent liabilities, and (b) the Federal tax revenues foregone by the Government, to the extent reasonably ascertainable. The FDIC estimates the value of the institution's assets based on available examination data and prior experience in collecting failed institution assets. In applying the cost calculation, the FDIC considers the premium that may be received for a closed institution in a purchase and assumption transaction and the administrative costs of paying off depositors. The FDIC also may consider other factors such as interest on funds it advances and the cost of maintaining a liquidation operation.

[11] The regulatory capital requirements of the respective Federal banking agencies are stated in: (1) For the Office of the Comptroller of the Currency, 12 CFR section 3.6; (2) for the Board of Governors of the Federal Reserve System, Appendix A to Regulation Y, 12 CFR Appendix A to part 225; (3) for the FDIC, 12 CFR part 325, including Appendix A to part 325; and (4) for the Office of Thrift Supervision, 12 CFR part 567, as published in 54 FR 46845 (Nov. 8, 1989).

[12] *See* sections 13(c)(3) and 13(c)(9) of the FDIA, 12 U.S.C. §§ 1823(c)(3) and 1823(c)(3)(9).

(4) If the assisted institution is a subsidiary of a holding company, the proposal should be structured so that available resources from the holding company and its other insured subsidiaries and/or nondepository subsidiaries are used to make a significant contribution toward minimizing the financial exposure of the FDIC.

(5) The proposal must provide for adequate managerial resources. Renegotiation or termination of management contracts is to be completed prior to the granting of assistance. Continued service of any directors or senior ranking officers who served in a policy-making role of the assisted institution, as may be determined by the FDIC, will be subject to approval by the FDIC. Further, the FDIC may review and object to any or all parts of any new compensation arrangements (including termination clauses) covering these individuals during the period assistance is outstanding.

(6) The FDIC will consider on a case-by-case basis whether the proposal shall provide the FDIC with an equity interest in the resulting institution.[13]

(7) It is preferable that any proposal for FDIC assistance provide for repayment of such assistance in whole or in part.

(8) The FDIC will consider on a case-by-case basis whether to acquire or service assets of assisted institutions. Generally, assistance proposals should provide for the surviving institution to service all assets of the assisted institution. Under appropriate circumstances, the FDIC may consider such incentives as bonus fees, gain-sharing, and loss-sharing arrangements on distressed assets.

(9) Fee arrangements to attorneys, investment bankers, accountants, consultants, and other advisers incident to requests for financial assistance must be disclosed to the FDIC and will be evaulated in determining the cost of the assistance package. Excessive fees must be avoided. In no case should payment of any fee be contingent upon approval or receipt of financial assistance.

(10) The FDIC shall consider assistance proposals within a competitive bidding process. The FDIC may solicit interest from qualified entities.

(11) An institution seeking open institution assistance must consent to unrestricted on-site due diligence reviews by any potential acquiror that is determined by the FDIC to be qualified after consultation with the appropriate Federal banking agency.

(12) Applicants must establish quantitative limits on all financial items in the proposal. For example, if applicants request indemnification from the FDIC for certain categories of contingent liabilities, assistance proposals must include ceilings on the FDIC's financial exposure for the respective categories of contingent liabilities.

(13) The financial effect on shareholders and creditors of the failing institution must approximate the effect that would have occurred had the assisted institution closed.

(14) If the assisted institution is a subsidiary of a holding company, the proposal should be structured so that the impact on directors, management, shareholders and creditors of the holding company approximates the situation that would be expected had the assisted insured institution subsidiary failed (holding company creditors therefore may be required to subordinate and/or renegotiate the terms of their debt).

### IV. Other Information

Any proposal requesting assistance in accordance with this policy statement should be addressed to the appropriate FDIC regional office of the Division of Supervision and should provide the amount, terms, and conditions to the assistance requested as well as the details of the financial support to be provided. This information must be presented in sufficient detail as to permit the FDIC to estimate the maximum cost that will be incurred as a result of the proposal.

A copy of any proposal requesting assistance in accordance with this policy statement should be provided to the Assistance Transactions Section, Division of Supervision, FDIC, 550 17th Street NW., Washington, DC 20429, the institution's chartering authority, and, if approvals under the Bank Holding Company Act are required, the appropriate Federal Reserve Bank.

By Order of the Board of Directors. Dated at Washington, DC, this 27th day of March, 1990.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 90-7726 Filed 4-3-90; 8:45 am]

BILLING CODE 6714-01-M

[13] *See* section 13(c)(4)(B) of the FDIA, 12 U.S.C. 1823(c)(4)(B). The FDIC is prohibited under Section 13(c)(4)(B) from purchasing the voting or common stock of an insured institution; however, this restriction does not preclude the acceptance by the FDIC of non-voting preferred stock, warrants, or other forms of equity or equity-equivalent arrangements.

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 212-010286-026.

*Title:* South Europe/U.S.A. Pool Agreement.

*Parties:*

Compania Trasatlantica Espanola, S.A.
Costa Container Line, A Division of Contship Containerlines Limited
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
"Italia" di Navigazione, S.p.A.
Jugolinija
Lykes Lines (Lykes Bros. Steamship Co., Inc.)
A.P. Moller-Maersk Line
Nedlloyd Lines (Nedlloyd Lijnen B.V.)
P & O Containers (TFL) Ltd.
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

*Synopsis:* The proposed amendment adds a new Article 5.C.6 to the Agreement which provides that within 30 days prior to the end of any Pool Period, the Pool Administrator shall issue adjusted guidelines to each Member of each Pool Section for the purpose of permitting each Member to achieve its Basic Pool Share in each Pool Section.

*Agreement No.:* 203-011117-006.

*Title:* United States-Australasia Interconference and Carrier Discussion Agreement.

*Parties:*

Pacific Coast/Australia-New Zealand Tariff Bureau
U.S. Atlantic & Gulf/Australia-New Zealand Conference
Blue Star Line, Ltd.
Hyundai Australia Direct Line
Hamburg-Sudamerikanische

Damfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line)
ScanCarriers
Associated Container Transportation (Australia) Ltd.
Ocean Star Container Line A.G.
Australia-New Zealand Direct Line
Nedlloyd Lines.

*Synopsis:* The proposed modification to the Agreement deletes Hyundai Australia Direct Line as a party. It also makes other nonsubstantive changes. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: March 30, 1990.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 90-7704 Filed 4-3-90; 8:45 am]

BILLING CODE 6730-01-M

## GENERAL SERVICES ADMINISTRATION

### Information Collection Activities Under Office of Management and Budget Review

**AGENCY:** Office of Acquisition Policy (VP), GSA.

**SUMMARY:** The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0205, GSAR Part 523: Environmental, Conservation, Occupational Safety, and Drug-Free Workplace. Hazardous material information clause requires a contractor to identify items to be delivered which are hazardous substances and to provide specific information concerning the shipment of that material.

**ADDRESSES:** Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

**Annual Reporting Burden**

*Respondents:* 1590; annual responses: 1.0; average hours per response: 0.3333; burden hours: 529.95.

**FOR FURTHER INFORMATION CONTACT:** Ida M. Ustad, (202) 566-1224.

*Copy of Proposal:* May be obtained from the Information Collection Management Branch (CAIR), Room 3014, GSA Building, 18th & F Sts. NW, Washington, DC 20405, by telephoning (202) 535-7691, or by faxing your request to (202) 786-9027.

Dated: March 22, 1990.

**Emily C. Karam,**

*Director, Information Management Division.*

[FR Doc. 90-7651 Filed 4-3-90; 8:45 am]

BILLING CODE 6820-61-M

### Information Collection Activities Under Office of Management and Budget Review

**AGENCY:** Office of Acquisition Policy (VP), GSA.

**SUMMARY:** The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0200, GSAR part 514: Sealed Bidding. The information requested regarding an offeror's monthly production capability is needed to make progressive awards to ensure coverage of stock items.

**ADDRESSES:** Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Streets NW., Washington, DC 20405.

**Annual Reporting Burden**

Respondents: 26; annual responses: 1.0; average hours per response: 0.1667; burden hours: 4.33.

**FOR FURTHER INFORMATION CONTACT:** Ida M. Ustad, (202) 566-1224. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), Room 3014, GSA Building, 18th & F Sts. NW., Washington, DC 20405, by telephoning (202) 535-7691, or by faxing your request to (202) 786-9027.

Dated: March 22, 1990.

Emily C. Karam,

*Director, Information Management Division.*

[FR Doc. 90-7650 Filed 4-3-90; 8:45 am]

BILLING CODE 6820-61-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 90N-0126]**

### Parke-Davis, et al.; Withdrawal of Approval of New Drug Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of 17 New Drug Applications (NDAs) based on the written requests of the applicants.

**EFFECTIVE DATE:** May 4, 1990.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Leary, Center for Drug Evaluation and Research, Document Management and Reporting Branch (HFD-53), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4320.

**SUPPLEMENTARY INFORMATION:** The holders of the NDAs listed below have informed FDA that the drug products approved under these NDAs are no longer marketed and have requested that FDA withdraw approval of the applications. The NDA holders have also, by request, waived their opportunity for a hearing.

The agency has determined that, in accordance with 21 CFR 25.24(c)(3), 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.

| NDA | Drug name | Applicant's name and address |
|---|---|---|
| 3-497 | Mixed Tocopherols | Parke-Davis, Division of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950. |
| 4-890 | Caligesic Calamine Analgesic Ointment | Merck Sharp & Dohme Research Labs., Division of Merck & Co., West Point, PA 19486. |
| 5-787 | Abdec Drops | Parke-Davis. |
| 7-278 | NTZ Solution | Sterling Drug Inc., 90 Parke Ave., New York, NY 10016. |
| 7-654 | Nebs Tablets | Norwich Eaton Pharmaceuticals, Inc., A Proctor & Gamble Co., P.O. Box 191, Norwich, NJ 13815-0191. |
| 8-461 | Triethylenemelamine | Lederle Laboratories, Division of American Cyanamid Co., Pearl River, NJ 10966. |
| 9-859 | Reserpine Tablets | Roxane Laboratories, Inc., P.O. Box 16532, Columbus, OH 43216-6532. |
| 10-012 | Sandril | Lilly Research Laboratories, Division of Eli Lilly & Co., Indianapolis, IN 46285. |
| 11-002 | Senokap Capsules | The Purdue Frederick Co., 100 Connecticut Ave., Norwalk, CT 06856. |
| 11-208 | Depinar Suspension | Armour Pharmaceutical Co., Box 511, Kankakee, IL 60901. |

| NDA | Drug name | Applicant's name and address |
|---|---|---|
| 11-748 | Oxylone Creame | The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001-0199. |
| 12-259 | Alphadrol Tablets | Do. |
| 13-092 | Sulfabid Tablets | The Purdue Frederick Co. |
| 13-093 | Sulfabid Tablets | Do. |
| 16-331 | Phenmetrazine | Western Fher Laboratories Inc., P.O. Box 7468, Ponce, PR 00732-5596. |
| 17-092 | Zincon Shampoo | Lederle Laboratories. |
| 17-434 | Prostin F2 Alpha Sterile Solution | The Upjohn Co. |

Therefore, under section 505(e) of the the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the new drug applications listed above, and all amendments and supplements thereto, is hereby withdrawn, effective May 4, 1990.

Dated: March 26, 1990.

**Gerald F. Meyer,**

*Deputy Director, Center for Drug Evaluation and Research.*

[FR Doc. 90-7692 Filed 4-3-90; 8:45 am]

BILLING CODE 4160-01-M

## Health Resources and Services Administration

### Rural Health Reserach Centers Acceptance of Grant Applications; Correction

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of extension of application due date.

**SUMMARY:** This notice extends the due date previously published in the **Federal Register** February 16, 1990, (55 FR 5666) for applications for grants for rural health research centers. The new date is May 14, 1990. All other information remains unchanged.

Dated: March 29, 1990.

**Robert G. Harmon,**

*Administrator.*

[FR Doc. 90-7690 Filed 4-3-90; 8:45 am]

BILLING CODE 4160-15-M

## Public Health Service

### Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (47 FR 38418-24, August 31, 1982, as amended most recently at 55 FR 9510, March 14, 1990) is amended to reflect a clarification to the functions carried out by the Division of Fiscal Services within the Office of Operations and Management, Health Resources and Services Administration.

*Under HB-10, Organization and Functions,* delete item number 1 under the *Division of Fiscal Services (HBA47)* and substitute the following:

(1) Provides accounting and fiscal services for activities of the Health Resources and Services Administration, the Office of the Assistant Secretary for Health, and other designated organizations;

This clarification is effective upon date of signature.

Dated: March 26, 1990.

**Robert G. Harmon,**

*Administrator.*

[FR Doc. 90-7691 Filed 4-3-90; 8:45 am]

BILLING CODE 4160-15-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

**[Docket No. N-90-3039; FR-2789-N-01]**

### Application Submission Dates for HUD-Administered Small Cities Program for Fiscal Year 1990

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice advises prospective applicants of the date for submission of applications to HUD offices for the HUD-Administered Small Cities Program in New York under the Community Development Block Grant Program for Fiscal Year 1990.

**FOR FURTHER INFORMATION CONTACT:** Stanley Gimont, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202)755-6322. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR 570.420(h)(3), the Department of Housing and Urban Development (HUD) has established the date for submission of applications for Small Cities grants in the State of New York for Fiscal Year 1990. Applications for funding under the Single Purpose and Comprehensive Grant provisions of the HUD-Administered Small Cities Program must be postmarked no later than April 23, 1990. Applications postmarked after that date are unacceptable and will be returned.

A total of $33,700,000 is available to Small Cities in New York State though the HUD-administered Small Cities Program in Fiscal Year 1990. Of this amount, $4,043,000 will be distributed to units of general local government within the jurisdiction of HUD's New York Regional Office. The remainder, $29,657,000, will be distributed to units of general local government within the jurisdiction of HUD's Buffalo, New York, Area Office. These amounts may be adjusted later this Fiscal Year to reflect revised Departmental estimates of Urban Development Action Grant recaptures.

Applications for Single Purpose grants under 24 CFR 570.430, or applications for Comprehensive Grants under 24 CFR 570.426 for the State of New York are required to be submitted no later than April 23, 1990. Applicants in New York in the Counties of Sullivan, Ulster, and Putnam and nonparticipating jurisdictions in the Urban Counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should obtain application materials from and submit applications to the HUD's New York Regional Office. The address of the New York Regional Office is: Office of Community Planning and Development, U.S. Department of Housing and Urban Development, Jacob K. Javits Federal Building, 26 Federal Plaza—Room 35-04, New York, New York 10278-0068.

All other nonentitled communities in the State of New York should obtain application materials from and submit applications to HUD's Buffalo Area Office. The address of the Buffalo Area Office is: Office of Community Planning

and Development, U.S. Department of Housing and Urban Development, Lafayette Court, 465 Main Street, Buffalo, New York 14203.

When the selection process is concluded and the Federal Year 1990 awards are made, a list of recipients will be published in the **Federal Register.**

The Application requirements related to this program have been approved by the Office of Management and Budget (OMB) and assigned approval number 2506–0060. This action is exempt from the provisions of the National Environmental Policy Act under 24 CFR 50.20(k).

Dated: March 14, 1990.

**Anna Kondrates,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 90–7649 Filed 4–3–90; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Fish and Wildlife Service Hydropower Policy; Comment Period Reopened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of Reopening Comment Period.

**SUMMARY:** The Fish and Wildlife Service (Service) gives notice that the period for public comments on the need and scope of a Service hydropower policy has been reopened.

**DATES:** Written comments should be received by May 4, 1990.

**ADDRESSES:** Comments should be directed to: Director, U.S. Fish and Wildlife Service, 400 ARLSQ, 18th and C Streets, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Frank DeLuise, Chief, Branch of Federal Activities, U.S. Fish andWildlife Service, 400 ARLSQ, 18th and C Streets, NW., Washington, DC 20240, (703) 358–2183 or FTS 921–2183.

**SUPPLEMENTARY INFORMATION:** On January 10, 1990, the Service published a Notice in the **Federal Register** requesting public comments on the need for a specific Service hydropower policy and if so, the scope and content of such a policy. Comments were due by March 12, 1990. A request for an extension of the comment period was received on March 12 from Dr. Nancy Erman of the University of California, Berkeley. The request was based on the late receipt of the **Federal Register** Notice. Additional requests for extensions were received following the original comment period. In order to assure that a full range of public comments can be considered, the Service is reopening the comment period and will accept comments through May 4, 1990.

Date: March 27, 1990.

**Richard N. Smith,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 90–7685 Filed 4–3–90; 8:45 am]

BILLING CODE 4310–55–M

### Bureau of Land Management

[UT–060–00–4320–02]

### Meeting: Moab District Grazing Advisory Board

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Moab District Grazing Advisory Board meeting.

**SUMMARY:** Notice is hereby given in accordance with Public Law 92–463 that a meeting of the Moab District Grazing Advisory Board will be held on April 27, 1990. The meeting will begin at 10:30 a.m. in the conference room of the Bureau of Land Management's Moab District Office at 82 East Dogwood, Moab, Utah 84532.

The Agenda for the meeting will include:

1. Report on drought strategy and procedures through out the District.
2. Proposed purchase of the Bogart, Cottonwood, Diamond and portions of the Cisco Allotments by Nature Conservancy and Utah Division of Wildlife Resources. Discussion of future management implications.
3. Canyon Rims Recreation Area Development Plans, Scenic Backways and Byways program and implications toward grazing management.
4. Report on wild cow incident in Desolation Canyon.
5. Public topics as submitted below.

The meeting is open to the public. Interested persons may make oral statements to the Board between 2 p.m. and 3 p.m. on April 27, 1990 or file written statements for the Board's consideration. Anyone wishing to make an oral statement must submit a written summary of their statement to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532, by April 24, 1990. Written statements submitted for the Board's consideration must be received at the above address on or before April 26, 1990. Summary minutes of the Board meeting will be maintained in the District Office and will be available within thirty (30) days following the meeting.

**Gene Nodine,**

*District Manager.*

[FR Doc. 90–7723 Filed 3–30–90; 1:41 pm]

BILLING CODE 4310–DQ–M

[NM–910–GPO–300–399]

### BLM New Mexico Recreation Fee Policy

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notification of Recreation Fee Policy.

**SUMMARY:** The Bureau of Land Management, New Mexico Recreation Fee Policy is implemented effective on the date of this notice. In accordance with the Bureau of Land Management's (BLM's) Recreation-2000 initiative, the New Mexico BLM Recreation Fee Policy is to continue to collect fees for overnight camping at designated sites. These fees range from $5 to $7 per night. The new requirement is that New Mexico BLM will require day use fees at certain recreation management areas for those recreationists that do not camp overnight. These day use fees will range from $3 to $5 per day. These areas will be adequately signed to inform the public.

The following RMA's will be subject to the new fee policy:

Wild Rivers Recreation Area, Taos County
Santa Cruz Lake, Santa Fe County
Orilla Verde, Taos County
Aguirre Springs, Dona Ana County
Valley of Fires, Lincoln County

**ADDRESSES:** Copies of the BLM New Mexico Recreation Fee Policy are available at Bureau of Land Management, Public Assistance Unit, 120 South Federal Place, Santa Fe, NM 87504. Copies can also be requested by calling (505) 988–6000.

**Larry L. Woodard,**

*State Director.*

[FR Doc. 90–7696 Filed 4–3–90; 8:45 am]

BILLING CODE 4310–FB–M

[CA–060–00–4410–08]

### Designation of Santa Rosa Mountains National Scenic Area, Applying to Public Lands Administered by the Bureau of Land Management (BLM) in Riverside County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Santa Rosa Mountains area of the California Desert has long been recognized as possessing extraordinary natural and cultural resource values. Although various special area designations and management actions have focused on the area, the fragmented land ownership pattern and numerous jurisdictions have created a situation in which a consistent and comprehensive set of management actions heretofore could not be assured. Designation of the Santa Rosa Mountains as a National Scenic Area (NSA) will direct attention to the area and provide a management umbrella not only to coordinate specific management actions, but also to support ongoing planning actions.

The public lands will continue to be managed in accordance with the California Desert Conservation Area (CDCA) Plan of 1980, as amended, and as prescribed by existing regulations and resource activity plans. The designation has been considered as an official amendment to the CDCA Plan, and the designation concludes that decisionmaking process. When BLM Completes the National Scenic Area Management Plan (Phase III, described below), its management prescriptions will take effect upon adoption and guide details relating to use, protection, and projects. If recommendations to change items that are within the purview of the CDCA Plan (e.g., land-use class boundaries) result from the Management Plan, the CDCA Plan will be amended under the normal procedures. All non-Federal lands acquired within the NSA during planning Phase I, II, or III will be managed in accordance with the existing CDCA Plan prescriptions that apply to the adjacent public lands.

The NSA designation will provide added emphasis to BLM's commitment to protect the area's nationally significant wildlife, wilderness, cultural, recreational, vegetative, and scenic values. Ongoing proposals to develop private lands within the NSA will be addressed by local governments, which retain jurisdiction over such actions, in cooperation with BLM. An integrated management plan will be prepared to provide detailed direction for management decisions throughout the area, and to provide the operational framework for consistency among all entities. Public and agency involvement will guide plan preparation.

The designation will be implemented in three phases. Initially, as Phase I, appropriate signs will be erected to encourage public sensitivity and awareness of the area's natural scenic resources, and to build broad public and local government support and recognition of the area's protection and management needs and BLM's coordinating and leadership role. Phase II will commence during the spring and summer of 1990 with the development of a Management Philosophy Statement and Interim Program Guide. These will be developed with public participation and reviewed by the BLM's Desert District Advisory Council. These documents will direct actions through 1990 and 1991 until the final long-range management plan is developed. Phase III will commence in Fiscal Year 1991 with the initiation of the National Scenic Area Management Plan. This plan, with full public participation, will determine the ultimate effect of designation by setting priorities for land tenure adjustment, development, resource interpretation, access, and the interrelationships among local governments that have interests in and around the NSA.

Nothing herein shall be deemed to overturn existing management and use arrangements or land tenure. Specifically, the Santa Rosa Mountains Habitat Management Plan, developed in cooperation with California Department of Fish and Game, remains in effect. Modification could occur but only as an outcome of the general planning process for the NSA, and only after full consultation with affected interests.

Pursuant to the authority in section 601 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1781) those public lands administered by BLM and described in the CDCA Plan as the Santa Rosa Mountains National Scenic Area are hereby designated the Santa Rosa Mountains National Scenic Area. The boundaries shall be as described in the Final Environmental Assessment and Decision Record for the Santa Rosa Mountains National Scenic Area dated March 2, 1990, official copies of which are maintained in the BLM California Desert District Office, Riverside, California. Maps of the NSA shall be maintained in California at the Office of the State Director, California State Office, Sacramento, California, copies of which can be obtained through BLM offices in California. Modification to boundaries may only be made through amendment to the CDCA Plan.

**EFFECTIVE DATE:** March 31, 1990.

**ADDRESSES:** Any inquiries or suggestions should be sent to: District Manager, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, California 92507.

**FOR FURTHER INFORMATION CONTACT:** Gerald C. Hillier at the above address or 714–276–6383.

Dated: March 29, 1990.

**Manuel Lujan, Jr.,**

*Secretary of the Interior.*

[FR Doc. 90–7695 Filed 4–3–90; 8:45 am]

BILLING CODE 4310–40–M

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[ID–040–00–4212–13]

## Realty Action—Exchange; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action—Exchange of public lands in Custer County, Idaho.

**SUMMARY:** The following described public land is being considered for transfer out of Federal ownership by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

**Boise Meridian**

T. 9 N., R. 17 E.,
Sec. 1: SE¼ of Lot 3;
Sec. 2: S½SE¼SE¼NE¼, NE¼SE¼SE¼NE¼, S½SE¼SW¼SE¼, NE¼SE¼SW¼SE¼;
Sec. 27: Lot 2.
T. 8 N., R. 22 E.,
Sec. 6: Lot 3.

Aggregating 71.67 acres more or less.

In exchange for these lands, the United States will acquire the following described private lands:

**Boise Meridian**

T. 9 N., R. 17 E.,
Sec. 15: Lot 7;
Sec. 27: Parcel A, Parcel C.
T. 9 N., R. 22 E.,
Sec. 31: S½SE¼ (that portion north of the highway)

Aggregating 82.37 acres more or less.

The purpose of the exchange is to facilitate resource management programs of the Bureau of Land Management and to enhance public access to the White Cloud Peaks area of the Sawtooth National Recreation Area. The Federal lands to be exchanged have been used along with the private lands.

This proposal is consistent with Bureau planning for the lands involved and has been discussed with State and local officials. The public interest will be well served by making this exchange. The comparative values of the lands exchanged are approximately equal and the acreage will be adjusted and/or a cash payment to the United States will be used to equalize the values upon completion of the final appraisal of the lands. Any monetary adjustments made will be for no more than 25% of the appraised value of Federal lands involved.

The exchange will be subject to:

(1) A reservation to the United States of a right-of-way for ditches or canals under the Act of August 30, 1890.

(2) Valid existing rights including but not limited to any right-of-way, easement, or lease of record.

(3) Mineral estates will be transferred with the surface on both the non-Federal and Federal lands.

Publication of this notice has the effect of segregating all of the above described Federal land from appropriation under the public land laws and these lands are further segregated from appropriation under the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of the publication of this notice, whichever occurs first.

Detailed information concerning the exchange is available for review at the Salmon District Office of the Bureau of Land Management, Highway 93 South, Salmon, Idaho 83467.

For a period of 45 days, interested parties may submit comments to the Salmon District Manager at the above address. Any adverse comments will be evaluated by the Idaho State Director, BLM, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: March 23, 1990.

**Kathe Rhodes,**

*Acting District Manager.*

[FR Doc 90-7659 Filed 4-3-90; 8:45 am]

BILLING CODE 4310-GG-M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731-TA-438 (Final)]**

### Limousines from Canada

**AGENCY:** United States International Trade Commission.

**ACTION:** Termination of investigation.

**SUMMARY:** On March 29, 1990, the Commission received a letter from petitioner in the subject investigation (Southampton Coachworks, Ltd., Farmingdale, NY), withdrawing its petition. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping investigation concerning limousines from Canada (investigation No. 731-TA-438 (Final)) is terminated.

**EFFECTIVE DATE:** March 29, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mary Trimble (202-252-1193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

**Authority:** This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: March 30, 1990.

[FR Doc. 90-7808 Filed 4-2-90; 9:20 am]

BILLING CODE 7020-02-1

**[Investigation No. 337-TA-309]**

### Certain Athletic Shoes With Viewing Windows; Decision Not To Review an Initial Determination

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) granting a motion for leave to file an amended complaint in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202)-252-1116. Copies of the nonconfidential version of the ID 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 infomation on this matter can be obtained by contacting the Commission's TDD terminal at (202)-252-1810.

**SUPPLEMENTARY INFORMATION:** The Commission voted to institute this investigation on January 16, 1990. The notice of investigation was published in the **Federal Register** on January 23, 1990. (55 FR 2421-2). On February 9, 1990, complainant Autry Industries, Inc., filed a motion (Motion No. 309-1) for leave to file an amended complaint. On Feburary 21, 1990, respondent Reebok International Ltd. filed a repsonse in opposition to the motion, and the Commission investigative attorney filed a response indicating no opposition to the motion. On February 23, 1990, the presiding ALJ issued an ID (Order No. 3) granting complainant's motion. No petitions for review or agency comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rules 210.53-210.55 (19 CFR 210.53-210.55, as amended).

Issued: March 26, 1990.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 90-7711 Filed 4-3-90; 8:45 am]

BILLING CODE 7020-02-M

**[332-267]**

### The Effects of Greater Economic Integration Within the European Community on the United States

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of public hearing and deadline for submissions in connection with second follow-up report.

**SUMMARY:** The Commission has commenced work on the second of a series of follow-up reports updating its initial report issued in July 1989 in connection with investigation No. 332-267, *The Effects of Greater Economic Integration Within the European Community on the United States.* The reports were requested under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) by the House Committee on Ways and Means and the Senate Committee on Finance in a letter received on October 13, 1988. Notice of the institution of the investigation and scheduling of a public hearing was published in the **Federal Register** of December 21, 1988 (53 FR 51328), and notice of the procedure to be followed in follow-up reports was published in the **Federal Register** of September 20, 1989 (54 FR 38751).

The second follow-up report will follow a format similar to that of the earlier reports. However, the second follow-up report will contain, in addition, new chapters on R & D and technology and an analysis of the impact of EC integration efforts on three U.S. industries—automobile, telecommunications, and chemicals/pharmaceuticals. Persons having an interest in these areas or industries in particular, or any of the matters covered by the reports, may be interested in participating in the Commission's June 21, 1990, public hearing and/or in making written submissions in accord with the procedures set forth below.

The report on the initial phase of the investigation was sent to the Committees on Monday, July 17, 1989. The first follow-up report was sent to the Committees on Friday, March 30, 1990. Copies of either the initial report, *The Effects of Greater Economic Integration Within the European Community on the United States* (Investigation 332–267, USITC Publication 2204, July 1989) or the first follow-up report (Investigation 332–267, USITC Publication 2268, March 1990) may be obtained by calling 202–252–1809, or from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Requests can also be faxed to 202–252–2186.

The second follow-up report will be sent to the Committees on September 28, 1990.

**EFFECTIVE DATE:** March 23, 1990.

**FOR FURTHER INFORMATION CONTACT:** For further information on other than the legal aspects of the investigation contact Mr. John J. Gersic at 202–252–1342. For information on the legal aspects of the investigation contact Mr. William W. Gearhart at 202–252–1091.

**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 June 21, 1990. All persons shall 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 and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than 5 p.m., June 7, 1990. Post-hearing briefs may be submitted no later than July 5, 1990.

**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 submissions to be considered by the Commission for the second follow-up report should be received by the close of business on July 6, 1990. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing inpaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: March 26, 1990.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 90–7709 Filed 4–3–90; 8:45 am]

BILLING CODE 7020–02–M

## DEPARTMENT OF JUSTICE

### Lodging of Modified Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Modified Consent Decree in *United States* v. *City of New Bedford* has been lodged with the United States District Court for the District of Massachusetts. The modified consent decree addresses alleged violations by the City of New Bedford, MA of the 1987 Consent Decree.

The proposed Modified Consent Decree revises various parts of the 1987 Consent Decree, including the facility's planning schedules for the secondary wastewater treatment plant and combined sewer overflow ("CSO") abatement projects. The Modified Consent Decree also requires New Bedford to pay to the United States stipulated penalties in the amount of $60,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Modified 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. *City of New Bedford*, D.J. Ref. 90–5–1–1–2823.

The proposed Modified Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack, Post Office and Courthouse, Boston, Massachusetts 02109, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Rm. 2203, Boston, Massachusetts 02203. Copies of the Modified Consent Decree may also be examined at the Environmental Enforcement section, Land and Natural Resources Division, Department of Justice, Room 1647(D), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Modified Consent Decree may be obtained in person or by mail from the Environmental Enforcement section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to the referenced case name and D.J. Ref. number and enclose a check in the amount of $5.00 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

George W. Van Cleve,

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 90–7655 Filed 4–3–90; 8:45 am]

BILLING CODE 4410–01–M

### Antitrust Division

### United States v. The Gillette Co., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *The Gillette Company, Wilkinson Sword, Inc., Stora Kopparbergs Bergslags AB, and Eemland Management Services BV*, Civil Action No. 90–0053–TFH.

The Complaint of the United States, filed January 10, 1990, alleged that the acquisition by The Gillette Company ("Gillette") of the Wilkinson Sword wet shaving razor blade businesses of Eemland Management Services BV ("Eemland") outside the 12-nation European Community ("E.C.") violated section 7 of the Clayton Act, 15 U.S.C. 18. The non-E.C. businesses included the wet shaving razor blade business of

Eemland's wholly-owned subsidiary in the United States, Wilkinson Sword, Inc. ("Wilkinson"). The Complaint alleged that the effect of Gillette's acquisition of these Wilkinson Sword businesses may have been substantially to lessen competition in the sale of wet shaving razor blades in the United States. The Complaint requested that Gillette's acquisition of these businesses from Eemland be rescinded and that Gillette be barred from reacquiring ownership or control over these businesses.

After the United States filed this civil action, Gillette, Eemland, and Wilkinson rescinded Gillette's acquisition of Eemland's wet shaving business in the United States, leaving Gillette with the other non-E.C. businesses. After the rescission, Eemland retained the Wilkinson Sword wet shaving businesses in the United States and the E.C., but Gillette still had an equity and debt interest in Eemland that it acquired as part of the overall transaction.

Consumers in the United States annually purchase over $700 million of wet shaving razor blades at the retail level. Gillette is the largest manufacturer of wet shaving razor blades in the United States, accounting for over 50 percent of all such blades sold in 1989. In that same year, Wilkinson accounted for a substantial portion of the United States market. By acquiring Wilkinson, Gillette would have increased substantially its share of the market.

The proposed Final Judgment contains various provisions that would prohibit, without consent of the United States, Gillette from taking certain actions that could impair Eemland's ability to compete efficiently and effectively in the United States. The proposed Final Judgment would ensure the *status quo* by providing that Gillette could not reacquire the Wilkinson Sword wet shaving razor blade business in the United States, or assets that Eemland has been using to produce wet shaving razor blades for sale in the United States or the E.C. It also would bar Eemland from transferring to Gillette trademarks that Eemland has been using to sell those blades in the United States or the E.C. In the same vein, it would prohibit Gillette from acting as Eemland's agent for the United States wet shaving razor blade market. In addition, it would prevent Gillette from acquiring additional equity or debt interest in Eemland.

The proposed Final Judgment also contains various provisions that would help keep Eemland an independent competitor by restraining Gillette's ability to influence Eemland's business decisions.

Public comment is invited within the statutory 60-day comment period. Such comments and response thereto will be published in the **Federal Register** and filed with the court. Comments should be directed to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, Room 10–437, Judiciary Center Building, 555 4th Street NW., Washington, DC 20001, (202) 724–7966, within the statutory 60-day comment period.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

**[Civil Action No. 90–0053–TFH]**

United States of America, plaintiff, v. The Gillette Company, Wilkinson Sword, Inc., Stora Kopparbergs Bergslags AB, and Eemland Management Services BV, defendants.

**Stipulation**

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form attached hereto may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

2. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment;

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: March 26, 1990.

For the United States of America.

James F. Rill,

*Assistant Attorney General.*

John W. Clark,

Kenneth M. Frankel,

*Attorneys, U.S. Department of Justice, Antitrust Division.*

For the Gillette Company.

Dated: March 26, 1990.

William E. Swope,

*Jones, Day, Reavis & Pogue.*

Dated: March 26, 1990.

For Wilkinson Sword, Inc.

Daniel K. Tarullo,

*Shearman & Sterling.*

Dated: March 26, 1990.

For Eemland Management Services BV.

**Daniel K. Tarullo,**

*Shearman & Sterling.*

STIPULATION APPROVED FOR FILING

Done this _____ day of March, 1990.

Thomas F. Hogan,

*United States District Judge.*

**[Civil Action No. 90–0053–TFH]**

United States of America, Plaintiff, v. The Gillette Company, Wilkinson Sword, Inc., Stora Kopparbergs Bergslags AB, and Eemland Management Services BV, Defendents.

**Competitive Impact Statement**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)–(h)), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of defendants The Gillette Company, Wilkinson Sword, Inc., and Eemland Management Services BV in this civil antitrust proceeding.

*I. Nature and Purpose of the Proceeding*

This civil proceeding began on January 10, 1990 when the United States filed a complaint alleging that the acquisition by The Gillette Company ("Gillette") of the Wilkinson Sword wet shaving razor blade businesses of Eemland Management Services BV ("Eemland") outside the 12-nation European Community ("E.C.") violated Section 7 of the Clayton Act (15 U.S.C. 18). The non-E.C. businesses included the wet shaving razor blade business of Eemland's wholly-owned subsidiary in the United States, Wilkinson Sword, Inc. ("Wilkinson"). The complaint alleged that the effect of this acquisition may have been substantially to lessen competition in the sale of wet shaving razor blades in the United States. As defined in the complaint, wet shaving razor blades include those sold in packages of disposable blades or as part of disposable or reusable razors. The complaint requested that Gillette's acquisition of these businesses from Eemland be rescinded and that Gillette be barred from acquiring ownership or control over these businesses.

The United States and defendants Gillette, Eemland, and Wilkinson have agreed that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act and that the defendants will be

bound by the provisions of the proposed Final Judgment pending its approval by the Court. Entry of the proposed Final Judgment, along with the dismissal of the complaint against the fourth defendant, Stora Kopparbergs Berslags AB ("Stora"), would terminate this civil action, except that the Court would retain jurisdiction to construe, modify, and enforce the Final Judgment, and to punish violations of the Final Judgment.

*II. Events Giving Rise to the Alleged Violation*

1. The Acquisition

On December 20, 1989, Stora, a corporation based in Sweden, contracted to sell its wet shaving, lighter, and match businesses throughout the world to Eemland, a Netherlands corporation formed by a buyout group that included Gillette, certain managers of the businesses, and other investors. Stora's wet shaving business operated under the Wilkinson Sword trademark in the United States, Europe, and other areas of the world, and produced wet shaving razor blades and other wet shaving products. As part of the buyout plan, the buyout group contracted on the same date to sell the non-E.C. wet shaving businesses to Gillette. These businesses included Wilkinson, an Atlanta, Georgia-based firm that distributed in the United States and Canada Wilkinson Sword brand wet shaving razor blades and other wet shaving products manufactured by its affiliates abroad.

Eemland purchased the businesses from Stora for about $630 million, about one quarter of which came from Gillette at the time the contract was signed. Gillette purchased the non-E.C. wet shaving businesses for about $72 million. It also acquired about 23 percent of the non-voting equity shares of Eemland for about $14 million and subordinated debentures of Eemland for about $69 million. The non-voting equity shares will convert to voting shares under certain limited circumstances and interest on the debt will accrue as additional debt held by Gillette.

2. Market Conditions

Consumers in the United States annually purchase over $700 million of wet shaving razor blades at the retail level. Only five companies supply all but a nominal amount of those blades—Gillette, Wilkinson, Warner-Lambert Co. (Schick brand), BIC Corp. (BIC brand), and American Safety Razor Co. (Persona brand).

The complaint alleged that the market for wet shaving razor blades in the United States is a relevant product market for antitrust purposes and is highly concentrated. Gillette has been the market leader for many years. In 1989, Gillette accounted for over 50 percent of all wet shaving razor blades sold in the United States, in terms of units sold. In that year, Wilkinson accounted for a substantial portion of those blades sold in the United States. By acquiring Wilkinson's wet shaving razor blade business, Gillette would have increased substantially its already majority share of the United States market. Such an acquisition would have increased the Herfindahl-Hirschman Index (an indicator of market concentration) by over 600 points to over 4000.

The complaint alleged that entry into the United States market for wet shaving razor blades on a significant competitive level is difficult and time consuming. The entry obstacles include establishing the necessary brand recognition, distribution networks, and production facilities.

*III. Explanation of the Proposed Final Judgment and its Anticipated Effects on Competition*

The United States brought this action because the effect of Gillette's acquisition of Eemland's Wilkinson Sword wet shaving razor blade businesses outside the E.C. may have been substantially to lessen competition in the sale of wet shaving razor blades in the United States in violation of section 7 of the Clayton Act. Shortly after this case was filed, Gillette, Eemland, and Wilkinson rescinded Gillette's acquisition of Eemland's wet shaving razor blade business in the United States. The proposed Final Judgment would ensure that *status quo* by providing that Gillette could not, without the prior consent of the United States, reacquire the Wilkinson Sword wet shaving razor blade business in the United States or otherwise deprive Eemland of assets necessary to efficiently supply and support its wet shaving razor blade business in the United States. In particular, Section IV.1 would prohibit Gillette from acquiring further equity or additional debt of Eemland beyond the debt that will accrue under the terms of the existing agreements. Also, Section IV.2 would prohibit Gillette from acquiring assets that Eemland had been using to produce wet shaving razor blades for sale in the United States or the E.C., or to market, distribute, or sell wet shaving razor blades in the United States, with the exception of surplus production assets [1] and certain intellectual property rights (as long as the United States rights are licensed to Eemland).[2] In the same vein, Section IV.3 would prohibit Gillette from acting as Eemland's agent for the United States wet shaving razor blade market.

Section V of the proposed Final Judgment, which focuses on Eemland, would prohibit certain similar actions without the prior consent of the United States. Section V.1 would prohibit Eemland from transferring to Gillette those assets and securities that Section IV.1 and 2 would prohibit Gillette from obtaining from Eemland. Section V.2 would prohibit Eemland from transferring to Gillette trademarks that Eemland has used in the past year to sell wet shaving razor blades in the United States or the E.C. Section V.3 would bar Eemland from consenting to the revocation of certain intellectual property licenses from Gillette. Section V.4 would prohibit Eemland from using Gillette as an agent for the United States wet shaving razor blade business.

Rescinding just Gillette's acquisition of the United States business, however, would still have left substantial risk to competition in the United States since Gillette would remain an Eemland shareholder and creditor and also would be a marketer of wet shaving razor blades bearing the Wilkinson Sword trademark in geographic regions, such as Canada, adjoining Eemland's marketing areas. In each of these capacities, Gillette could have influenced Eemland in the conduct of its United States business. The proposed Final Judgment would substantially eliminate these competitive risks by restraining Gillette's ability to influence Eemland.

Section VI.1 of the proposed Final Judgment would prohibit Gillette or Eemland from agreeing or communicating in an effort to persuade the other to agree regarding various competitively sensitive subjects, such as prices to third parties in the United States and output for sale in the United States. It also would prohibit wet shaving razor blade purchase and sale transactions between Gillette and Eemland that would impair Eemland's ability to compete in the United States. Section VI.2 of the proposed Final

[1] Section IV.6 of the proposed Final Judgment would provide a means for Court review if there is disagreement as to whether particular assets are surplus.

[2] Gillette may have acquired certain intellectual property rights from Eemland that apply indivisibly to the United States as well as other geographic areas. Section IV.2 would permit Gillette to retain those rights as long as Eemland has an irrevocable, royalty free, exclusive license to those rights for the United States. Gillette granted such a license to Eemland when the parties rescinded Gillette's acquisition of Eemland's United States wet shaving razor blade business.

Judgment would prohibit Gillette from attempting to use its position as an Eemland equity holder or creditor to exert any influence over Eemland's wet shaving razor blade business. Section VI.3 would require Gillette to provide to Eemland a proxy to cast any voting rights in Eemland that Gillettee may obtain in the exact proportion as those votes cast by other holders of Eemland's securities. Thus, Gillette could exercise no discretion in how its votes, if any, are cast. Moreover, Section VI.3 would restrict Gillette from engaging in the management of Eemland and bar Gillette from nominating any Eemland directors or having any Gillette representative serve as a manager, officer, director, advisor or consultant, or in any comparable position with or for Eemland.

Section VI.4 of the proposed Final Judgment would specifically address Gillette's role as an Eemland creditor and would prohibit certain actions by Gillette without the prior consent of the United States. This section would prohibit Gillette from using its creditor position in Eemland to prevent or restrict Eemland from refinancing or obtaining additional credit or capital. Additionally, it would bar Gillette from attempting to use its creditor position to initiate any action that reasonably could be expected to cause Eemland to become insolvent or bankrupt. It further would restrict Gillette from using its creditor position to oppose any bankruptcy or insolvency plan supported by Eemland.

Section VI.5 of the proposed Final Judgment would provide a procedure for Gillette or Eemland to obtain Court review in the event that the United States does not consent to a proposed action that otherwise would be prohibited by the proposed Final Judgment without that consent.

In view of Gillette's major position in the market, Section IV of the proposed Final Judgment would require Gillette to notify the United States before making certain acquisitions from or of competitors in the United States wet shaving razor blade market, in situations where (as in this instance) no preacquisition notification is filed pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18a). Section IV.4 would require such notification before Gillette purchased assets that a substantial competitor used to supply the United States market during the year preceding the purchase or before Gillette acquired an equity or voting interest of 10 percent or more in a substantial competitor in the United States market. Section IV.5 would describe the required notification.

Section VII of the proposed Final Judgment would provide for notification to the United States about various significant events, including Gillette obtaining a voting interest in Eemland. Section VIII of the proposed Final Judgment would require each defendant to take various actions to inform its officers, directors, and appropriate employees of their obligations under the Final Judgment.

Section IX of the proposed Final Judgment would provide a means for the United States to obtain information from the defendants to determine or secure compliance with the proposed Final Judgment. Under Section X, the Court would retain jurisdiction over this matter.

Section XI of the proposed Final Judgment would provide for expiration of the proposed Final Judgment on the tenth anniversary of its entry. However, if Gillette still retains any interest in Eemland at that time, only Sections IV and V would expire. The rest of the Final Judgment would continue until such time as Gillette no longer retains any interest in Eemland, to prevent Gillette from influencing Eemland.

*IV. Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under the provisions of section 3(a) of the Clayton Act (15 U.S.C. 16(a)), entry of the proposed Final Judgment would have no prima facie effect in any subsequent private lawsuit that may be brought against the defendants.

*V. Procedures Available for Modification of the Proposed Final Judgment*

The United States and defendants Gillette, Eemland, and Wilkinson have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, Judiciary Center Building, Room 10–437, 555 4th Street NW, Washington, DC 20001.

Under Section X of the proposed Final Judgment, the Court would retain jurisdiction over this matter for the purpose of enabling the United States or the defendants to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of compliance with the Judgment, or for the punishment of any violations of the Judgment.

*VI. Alternatives to the Proposed Final Judgment*

Compliance with the proposed Final Judgment would permit Eemland to remain an efficient and independent competitor in the United States.

In its complaint, the United States sought to rescind not only Gillette's acquisition of the Wilkinson Sword wet shaving business in the United States, which the defendants already have done, but also Gillette's acquisition of those businesses outside of the United States and the E.C. After conducting discovery on the issue, the United States concluded that Eemland has ample production capability in the E.C. to serve the E.C. and the United States markets, has sufficient total sales to support the necessary research and development, and has the intent and incentive to compete actively in the United States market. Thus, the United States decided that the return to Eemland of wet shaving businesses outside the United States and the E.C. was not necessary to ensure that Eemland would be an effective competitor in the United States market.

The United States also considered requiring the parties to rescind Gillette's acquisition of the Wilkinson Sword wet shaving razor blade business in Canada,

in view of the proximity of Canada to the United States market and the fact that Wilkinson's Atlanta, Ga. facility packaged and distributed wet shaving razor blades for Canadian as well as United States customers. Plaintiff learned, however, that Gillette's potential ability to negatively influence the United States market by actions in Canada was not very great and that the economies arising from supplying both the United States and Canada from a single packaging and distribution facility were not substantial. In addition, continued litigation to try to obtain these marginal competitive benefits by rescinding Gillette's acquisition of the Canadian Wilkinson Sword business would entail substantial time and expense coupled with a substantial risk that the United States would not succeed on this issue.

The complaint also sought rescission of Gillette's investments in Eemland. The United States concluded, however, that such a requirement was not necessary to prevent Gillette from exerting influence over Eemland in view of the provisions to prevent that influence that are included in the proposed Final Judgment.

Under the circumstances, the United States determined that the public interest in preserving competition in the wet shaving razor blade market in the United States would be served best by prompt entry of an enforceable consent decree of the nature proposed. Although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. 15(b)-(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because the defendants have stipulated to comply with the terms of the Judgment pending its entry by the Court.

*VII. Determinative Documents*

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Dated: March 26, 1990.

Respectfully submitted,

Kenneth M. Frankel,

*Attorney, U.S. Department of Justice, Antitrust Division, Judiciary Center Building, Rm. 10–437, 555 4th Street NW., Washington, DC 20001, Tel. (202) 724–7973, D.C. Bar No. 330647.*

**[Civil Action No. 90-0053-TFH]**

United States of America, plaintiff, v. The Gillette Company, Wilkinson Sword, Inc., Stora Kopparbergs Bergslags AB, and Eemland Management Services BV, defendants.

**Final Judgment**

WHEREAS:

1. Plaintiff, the United States of America, having filed its Complaint herein on January 10, 1990, and plaintiff and defendants The Gillette Company ("Gillette"), Wilkinson Sword, Inc. ("Wilkinson"), and Eemland Management Services BV ("Eemland"), collectively referred to herein as the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

2. The defendants having agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

3. Eemland having consented to the jurisdiction of this Court solely for the purposes of this Final Judgment;

4. By agreements dated December 20, 1989, and thereafter, Gillette having contracted with Eemland and others to acquire securities of Eemland as well as Eemland's wet shaving razor blade assets in the United States and other areas of the world outside of the European Community;

5. By agreement dated January 24, 1990, the defendants having amended portions of their agreements that had provided for Gillette to acquire Eemland's wet shaving razor blade assets in the United States, to provide for Eemland to retain those assets;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby

Ordered, Adjudged, and Decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against each of the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II

As used in this Final Judgment, the term:

1. "Gillette" means defendant The Gillette Company, each division, subsidiary, affiliate, successor, or assign thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them, at any time during the existence of this Final Judgment.

2. "Eemland" means defendant Eemland Management Services BV, each division, subsidiary, affiliate, successor, or assign thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them, at any time during the existence of this Final Judgment. Eemland includes its wholly-owned subsidiary, Wilkinson.

3. "Wilkinson" means defendant Wilkinson Sword, Inc., each division, subsidiary, affiliate, successor, or assign thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them, at any time during the existence of this Final Judgment.

4. "Affiliate" of a legal entity means a person controlled, directly or indirectly, by a common parent of that legal entity.

5. "Asset" means any asset of any type, including but not limited to real, personal, tangible, and intangible (e.g., intellectual) property.

6. "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, association, institute, or other business or legal entity.

7. "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, or any other interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

8. "Surplus Eemland production asset" means any asset that Eemland previously had used but no longer is using or planning to use for the production of wet shaving razor blades for sale in the United States or the European Community, the sale of which will not impair Eemland's ability to compete in the sale of wet shaving razor blades in the United States.

9. "United States wet shaving razor blade supplier" means any producer of wet shaving razor blades for sale in the United States, or any of its affiliates or subsidiaries that markets, distributes, or sells wet shaving razor blades in the United States.

10. "Wet shaving razor blades" means razor blades designed for use in shaving wet hair, which are sold either in packages of disposable blades or as part of disposable or reuseable razors.

III

This Final Judgment applies to each of the defendants and to each such defendant's officers, directors, employees, agents, divisions, subsidiaries, affiliates, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

1. Gillette shall not, without the prior written consent of plaintiff, acquire any additional interest in any securities of Eemland, with the exception of: (a) interest that accrues as debt pursuant to the terms of Eemland's agreements with Gillette dated December 21, 1989 (Non-Institutional Mezzanine Facility Agreement and Intercreditor Agreement) and January 22, 1990 (Supplemental Agreement); and (b) the conversions referred to in Sections VII.2 and 3 of this Final Judgment.

2. Gillette shall not, without the prior written consent of plaintiff, retain or acquire any interest in any assets that at any time during the twelve (12) months immediately preceding the acquisition, Eemland had owned or leased and used in the production of wet shaving razor blades for sale in the United States or the European Community, or in the marketing, distribution, or sale of wet shaving razor blades in the United States; provided, however, that nothing in this Final Judgment shall prevent Gillette from:

a. acquiring any interest in any surplus Eemland production assets, provided that Eemland provides to plaintiff thirty (30) days advance written notification of the proposed acquisition, describing in detail the assets and explaining why the assets constitute surplus Eemland production assets, and plaintiff does not within thirty (30) days after receiving that notification, unless the time is extended by Eemland or Gillette, request additional information pursuant to Section IV.6 of this Final Judgment;

b. acquiring non-exclusive patent or know-how licenses from Eemland, or retaining any intellectual property rights it acquired from Eemland that pertain to the United States but that are not divisible from rights relating to other areas, as long as Eemland has an irrevocable, royalty-free, exclusive license to those rights for the United States;

c. acquiring or retaining any Eemland production facilities or assets in Zimbabwe or Brazil pursuant to the agreements referred to in paragraph 4 of the preamble to this Final Judgment.

3. Gillette shall not, without the prior written consent of plaintiff, act as an agent for Eemland in the production of wet shaving razor blades for sale in the United States, or in the marketing, distribution, or sale of wet shaving razor blades in the United States.

4. If no notification is filed pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. § 18a), as amended, for any acquisition described in Section IV.4. a. or b. of this Final Judgment:

a. Gillette shall not, without first providing planitiff with thirty (30) days prior written notification, acquire from any other person, other than Eemland, any interest in any assets that at any time during the twelve (12) months immediately preceding the acquisition any United States wet shaving razor blade supplier, other than Eemland, had owned or leased and used in the production of wet shaving razor blades for sale in the United States, or in the marketing, distribution, or sale of wet shaving razor blades in the United States; provided, however, that nothing in this Section IV.4 of this Final Judgment shall prevent Gillette from acquiring, or require Gillette to provide such notice before acquiring, any such assets if that supplier certifies to Gillette that it had revenues of less than $5 million (adjusted for inflation since December 31, 1989 in accordance with the United States Consumer Price Index) from the sale of wet shaving razor blades in the United States in the twelve (12) months immediately preceding the acquisition;

b. Gillette shall not, without first providing plaintiff with thirty (30) days prior written notification, acquire or accumulate ten (10) percent or more of the equity securities, or any other securities with voting rights, of any other United States wet shaving razor blade supplier, other than Eemland, that at any time during the twelve (12) months immediately preceding the acquisition had produced wet shaving razor blades for sale in the United States, or had marketed, distributed, or sold wet shaving razor blades in the United States; provided, however, that nothing in this Section IV.4 of this Final Judgment shall prevent Gillette from acquiring, or require Gillette to provide such notice before acquiring, any such securities if that supplier certifies to Gillette that it had revenues of less than $5 million (adjusted for inflation since December 31, 1989 in accordance with the United States Consumer Price Index) from the sale of wet shaving razor blades in the United States in the twelve (12) months immediately preceding the acquisition.

5. The notification required by Section IV.4 of this Final Judgment shall: (a) state the details of the proposed acquisition, including for each party to the proposed acquisition its name and address, its role in the proposed acquisition, and the unit and dollar volume of its sales of wet shaving razor blades in the United States in the preceding twelve (12) months, the date of the proposed acquisition, a description of the assets or securities proposed to be acquired, and the dollar value of the consideration to be paid by Gillette for the acquisition; and (b) include a copy of the agreement for the proposed acquisition, and of Gillette's most recent business, marketing, or strategic plans relating to its wet shaving razor blade business in the United States.

6. Within thirty (30) days after receipt of Eemland's written notification pursuant to proviso a. of Section IV.2 of this Final Judgment, unless Gillette or Eemland shall agree to extend the time, plaintiff may request from any defendant information and documents relevant to the proposed acquisition. If plaintiff makes such a request, Gillette shall not make the proposed acquisition unless plaintiff consents to the proposed acquisition or this Court permits the proposed acquisition. Production of the requested information and documents shall be accompanied by a written certification of the completeness of the production. Within thirty (30) days after receipt of complete production by each defendant of the additional information and documents plaintiff sought from it, unless Gillette or Eemland shall agree to extend the time, plaintiff shall inform Gillette and Eemland in writing whether plaintiff objects to the classification of the assets as surplus Eemland production assets. If plaintiff does not so object to the classification of these assets as surplus Eemland production assets within that time period, nothing in this Final Judgment shall prevent Gillette from making the proposed acquisition. If plaintiff so objects to this classification, Gillette or Eemland may petition this Court to permit the proposed acquisition. Gillette or Eemland shall have the burden of showing by the preponderance of the evidence that the assets constitute surplus Eemland production assets.

V

1. Eemland shall not transfer to Gillette any additional interest in any securities of Eemland, or any interest in any assets of Eemland except in accordance with the provisions of Section IV. 1 and 2, respectively, of this Final Judgment.

2. Eemland shall not, without the prior written consent of plaintiff, transfer to Gillette any interest in any rights in any trademarks in the United States or the European Community that, at any time during the twelve (12) months immediately preceding the acquisition, Eemland used in the sale of wet shaving razor blades.

3. Eemland shall not, without the prior written consent of plainteiff, consent to the revocation of any license from Gillette that grants Eemland any rights in any intellectual property that relates to wet shaving razor blades: (a) in the United States or the European Community; or (b) if the revocation would impair the ability of Eemland to compete in the sale of wet shaving razor blades in the United States or the European Community.

4. Eemland shall not, without the prior written consent of plaintiff, use Gillette as an agent for Eemland in the production of wet shaving razor bldes for sale in the United States, or in the marketing, distribution, or sale of wet shaving razor blades in the United States.

VI

1. Gillette and Eemland shall not agree or communicate in an effort to persuade the other to agree, directly or indirectly, regarding present or future prices or other terms or conditions of sale, volume of shipments, future production schedules, marketing plans, sales forecasts, or sales or proposed sales to specific customers, for wet shaving razor blades sold or to be sold in the United States; provided, however, that nothing in this Section VI.1 of this Final Judgment shall prevent Gillette and Eemland from entering into bona fide agreements between them for the purchase and sale of wet shaving razor blades, if: (a) Gillette and Eemland notify plaintiff in writing of each such agreement within three (3) days after such agreement has been entered, providing a detailed description of the transaction and a copy of each such agreement; (b) in connection with such a transaction there are not communications with each other, directly or indirectly, regarding present or future prices or terms or conditions of sale for wet shaving razor blades sold to others in the United States; and (c) the purchase and sale transaction does not impair Eemland's ability to compete in the sale of wet shaving razor blades in the United States.

2. Gillette shall not use or attempt to use, directly or indirectly, its position as a holder of Eemland's securities to exert any influence over Eemland in the conduct of Eemland's wet shaving razor blade business.

3. Gillette shall, within sixty (60) days of the entry of this Final Judgment, provide to Eemland a proxy to cast all voting rights that Gillette may have or acquire as a securities holder of Eemland in the exact proportion as the votes cast by other securities holders. Gillette shall not participate in the management of Eemland and shall not suggest or nominate, individually or as part of a group, any candidate for election to Eemland's Board of Directors, or serve as a manager, officer, director, advisor, or consultant, or in any comparable position with or for Eemland.

4. Gillette shall not, without the prior written consent of plaintiff, use or attempt to use its creditor position in Eemland: (a) to prevent or restrict Eemland's ability to refinance or obtain additional credit or capital; (b) to initiate any action the effect of which reasonably could be expected to cause Eemland to become insolvent or bankrupt; or (c) in the event of a proposed reorganization of Eemland because of insolvency or bankruptcy concerns, to vote against any reorganization plan proposed or supported by Eemland.

5. In the event that Gillette or Eemland seeks the written consent of plaintiff prior to taking any action that is otherwise prohibited by this Final Judgment without that consent, that defendant must provide to plaintiff written notification revealing the details of the proposed action along with a statement that the written notification is being made pursuant to this Section VI.5 of this Final Judgment. Within thirty (30) days after receipt of this written notification, unless that defendant shall agree to extend the time, plaintiff may request from any defendant information and documents relevant to the proposed action. Production of the requested information and documents shall be accompanied by a written certification of the completeness of the production. Within thirty (30) days after receipt of the written notification, or of complete production by each defendant of the additional information and documents plaintiff sought from it, whichever occurs later, unless the defendant seeking to take the proposed action shall agree to extend the time, plaintiff shall inform that defendant in writing whether plaintiff consents to the proposed action. If plaintiff does not consent to the proposed action, the defendant seeking to take that proposed action may petition this Court for approval to take that action. The petitioning defendant shall have the burden of showing by the preponderance of the evidence that the proposed action would not substantially lessen completion in the sale of wet shaving razor blades in the United States.

VII

1. Each defendant shall provide written notice to plaintiff no later than thirty (30) days subsequent to the effective date of any action whereby the defendant: (a) changes its name or principal of business; (b) liquidates or otherwise ceases operation; or (c) is acquired or merges with another firm.

2. Gillette shall provide written notice revealing all details to plaintiff no later than two (2) days after receiving notification of any event that causes or would cause any of Gillette's securities of Eemland to convert to voting shares in Eemland, or that otherwise causes Gillette to have any voting interest in Eemland.

3. Eemland shall provide written notice revealing all details to plaintiff no later than two (2) business days after receiving notification from Gillette of Gillette's intention to convert any securities of Eemland to voting shares in Eemland or otherwise to have any voting interest in Eemland.

VIII

Each defendant is ordered and directed to:

1. Within thirty (30) days after the date of entry of this Final Judgment and annually thereafter, furnish a copy of this Final Judgment (accompanied by a translation into the recipient's language, where necessary) to its president or chief executive officer, and to each of its officers, directors, and supervisory employees (whether located in the United States or elsewhere) then responsible for making pricing or marketing decisions for wet shaving razor blades in the United States.

2. Furnish a copy of this Final Judgment (accompanied by a translation into the recipient's language, where necessary) to each successor to any of those persons described in Section VIII.1 hereof, within thirty (30) days after such successor assumes that position.

3. File with this Court and serve upon plaintiff, within sixty (60) days from the date of entry of this Final Judgment, a

statement as to the facts and manner of its compliance with Section VIII.1 hereof, and the measures that it has taken to assure compliance with Section VIII.2 hereof.

IX

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

1. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants Gillette or Wilkinson made to its principal office, be permitted:

a. Access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant, which may have counsel present, relating to any matters contained in this Final Judgment;

b. Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees and agents of the defendant, who may have counsel present, regarding any such matters.

2. Upon receipt of a written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, Eemland (but not its Wilkinson subsidiary) shall:

a. Provide within sixty (60) days to the Department of Justice in Washington, D.C., copies of any books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Eemland, relating to any matters contained in this Final Judgment;

b. Subject to the reasonable convenience of Eemland and without restraint or interference from it, permit duly authorized representatives of the Department of Justice to interview officers, employees and agents of the defendant, who may have counsel present, regarding any such matters.

3. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to any defendant's principal office, the defendant shall submit such written reports (in the English language or accompanied by an English language translation) under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

4. Nothing in Section IX of this Final Judgment shall require any defendant to take any action in any country that is prohibited by the government of that country pursuant to provisions of that country's laws, provided that the defendant has exercised its best efforts to obtain permission to take that action from the appropriate person or governmental authority.

5. No information or documents obtained by the means provided in Sections IV, V, VI, or IX of this Final Judgment shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

6. If at the time information or documents are furnished by any defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

X

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XI

This Final Judgment will expire on the tenth anniversary of its date of entry, provided that, at that time, Gillette no longer has any interest in any securities of Eemland. If, at that time, Gillette has any such interest in Eemland: (a) only Sections IV and V of this Final Judgment will expire at that time; and (b) the rest of this Final Judgment will expire at such time as Gillette no longer has any such interest in Eemland.

Entry of this Final Judgment is in the public interest.

**Thomas F. Hogan,**

*United States District Judge.*

[FR Doc. 90-7654 Filed 4-3-90; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Job Training Partnership Act: Announcement of Proposed Noncompetitive Grant Awards

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of intent to award noncompetitive grant.

**SUMMARY:** The Employment and Training Administration (ETA) announces its intent to modify our current grant on a noncompetitive basis with the International Association of Machinists—Center for Administering Rehabilitation and Employment Services (IAM–CARES) to provide specialized services under the authority of the Job Training Partnership Act (JTPA).

**DATES:** It is anticipated that this grant agreement will be executed by April 20, 1990, and will be funded for one year. Submit comments by 4:45 p.m. (Eastern Time), on April 19, 1990.

**ADDRESSES:** Submit comments regarding the proposed assistance award to: U.S. Department of Labor, Employment and Training Administration, room C–4305, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Gwendolyn Simms; Reference FR–DAA–003.

**FOR FURTHER INFORMATION CONTACT:** Gwendolyn Simms, telephone (202) 535–8702.

**SUPPLEMENTAL INFORMATION:** The Employment and Training Administration (ETA) announces its intent to modify our current grant with IAM–CARES. The grantee will operate adult programs in Washington, DC and St. Louis, Missouri and a program for disadvantaged handicapped youth in Seattle, Washington (without regard to union membership).

The grantee will:

1. Enroll unemployed or under-employed disabled persons.
2. Provide training, supportive services and job development for participants.
3. Place individuals in competitive employment.
4. Work with employers to develop jobs and provide follow-up services.

5. Identify disincentives to disabled employment and assist disabled clients in overcoming these obstacles.
6. Sponsor advisory councils of union, employer, community organizations and the disabled to broaden support for project goals.

Funds for this activity are authorized by the Job Training Partnership Act (JTPA) as amended, Title IV Federally Administered Programs. The proposed funding is $267,800 for a period of twelve (12) months.

Signed at Washington, DC, on March 21, 1990.

**Robert D. Parker,**

*ETA Grant Officer.*

[FR Doc. 90-7738 Filed 4-3-90; 8:45 am]

BILLING CODE 4510-30-M

## LIBRARY OF CONGRESS

### Copyright Office

**[Docket No. RM 87-7C]**

### Cable Compulsory License; Specialty Station Determination: Preliminary Findings and Request for Comments

**AGENCY:** Library of Congress, Copyright Office.

**ACTION:** Notice of preliminary findings and request for comments.

**SUMMARY:** By a policy decision issued September 18, 1989 (54 FR 38461) and a Request for Information (54 FR 38466), the Copyright Office invited all interested television broadcast stations claiming to qualify as specialty stations under the former distant signal carriage rules of the Federal Communications Commission at 47 CFR 76.5(kk) (1981) to submit to the Office sworn affidavits stating that in the preceding calendar year the programming of their stations satisfied the FCC's former requirements for specialty station status. The request for information specified the closing date for receipt of such affidavits as December 18, 1989.

The Office received 55 affidavits and hereby moves into the second phase of the three-part process it announced in its policy decision for determining specialty station status. In this second phase, the Office publishes a list of the stations that filed affidavits. At the same time the Office solicits from interested parties their comments as to whether any station on the preliminary list fails to qualify as a specialty station. The Office welcomes information that is factual and specific regarding stations and their alleged specialty station qualifications.

**DATES:** Comments should be received on or before June 4, 1990. Reply comments will be due July 3, 1990, later.

**ADDRESSES:** If delivered by mail, comments should be sent to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Department 17, Washington, DC 20540. If delivered by hand, the comments should be brought to: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Department 17, Washington, DC 20540. Telephone: (202) 707-8380.

**SUPPLEMENTARY INFORMATION:** On September 18, 1989, the Copyright Office published a notice of policy decision in Docket RM 87-7B (54 FR 38461) concerning the determination of specialty station status for purposes of calculating royalties under the cable compulsory license at 17 U.S.C. 111. The Copyright Office determined that a television broadcast station's current programming content should dictate whether the station qualifies as a specialty station under the cable compulsory license. Accordingly, the Office recognizes that the FCC's list of specialty stations dating back to 1981 should be revised now and periodically in the future. However, the Office believes that, for policy reasons, it should not itself verify the specialty station status of particular stations.

The Copyright Office decided instead to collect and note the public's views as to which station qualify as specialty stations, to list these stations in a notice in the **Federal Register**, to collect public comments on the eligibility of these stations as specialty stations, and then to publish a final annotated list of specialty stations that includes references to objections to stations' claims. The effective date of the final annotated list will coincide with the beginning of the accounting period that starts after the final list is published in the **Federal Register**. This will allow cable systems time to modify their channel line-ups should they discover that the status of a given station has changed.

Copyright Office licensing examiners will refer to the final annotated list in examining cable systems' claims on their statements of account that particular stations are specialty stations. If a cable system claims specialty station status for a station not on the final annotated list because, for example, the station has just begun operations, the examiner will look to see if the station has filed an affidavit since publication of the list. Affidavits received in this manner will be accepted by the Office with the understanding that those stations will resubmit affidavits when the Official formally updates the specialty station list every three years upon the former request of an interested party.

The stations claiming specialty station status under 47 CFR 76.5(kk)(1981) are listed below. The Office notes that among the stations claiming specialty station status are several translator stations. According to 37 CFR 201.17(b)(7), "[a] translator station is, with respect to programs both originally transmitted and retransmitted by it, a primary transmitter for the purpose of this section." A translator station retransmitting the programming of a specialty station holds the same status as the primary transmitter. Comments are welcome as to whether translator stations retransmitting specialty programming of primary stations need be listed on the specialty station list.

Interested parties are invited to present information formally and specifically should there be valid objection to identifying any station listed below as a "specialty station" for purposes of computing royalties under the cable compulsory license at station 111 of the Copyright Act of 1976.

**Specialty Station List: Call Letters and Cities of License**

KLUZ Alburquerque, New Mexico
KNAT Alburquerque, New Mexico
K48AM Alburquerque, New Mexico
WKBS Altoona, Pennsylvania
K39AB Bakersfield, California
KDOR Bartlesville, Oklahoma
KITU Beaumont, Texas
WCLJ Bloomington, Indiana
WRDG Burlington, North Carolina
WDLI Canton, Ohio
WCFC Chicago, Illinois,
WSNS Chicago, Illinois
WCLF Clearwater, Florida
WTGL Cocoa, Florida
KDTX Dallas, Texas
WTJP Gadsden, Alabama
KUVN Garland, Texas
WLXI Greensboro, North Carolina
WPCB Greensburg/Pittsburgh, Pennsylvania
KFTV Hanford-Fresno, California
KLUJ Harlingen, Texas
W47AD Hartford, Connecticut
KWHH Hilo, Hawaii
KHAI Honolulu, Hawaii
KWHE Honolulu, Hawaii
KETH Houston, Texas
WHMB Indianapolis, Indiana
WHKE Kenosha, Wisconsin

WWTO LaSalle, Illinois
WACX Leesburg, Florida
WEJC Lexington, North Carolina
KMEX Los Angeles, California
KWHY Los Angeles, California
WTKK Manassas, Virginia,
WTCT Marion, Illinois
WHFT Miami, Florida
WLTV Miami, Florida
WMPV Mobile, Alabama
KCSO Modesto, California
WMCF Montgomery, Alabama
WHTN Nashville, Tennessee
WSFJ Newark, Ohio
KMLM Odessa, Texas
KSBI Oklahoma City, Oklahoma
KTBO Oklahoma City, Oklahoma
WSWS Opelika, Alabama
WXTV Patterson, New Jersey
WHBR Pensacola, Florida/Mobile, Alabama
W35AB Philadelphia, Pennsylvania
KPAZ Phonenix, Arizona
KTVW Phoenix, Arizona
KVTN Pine Bluff, Arkansas
KTDZ Portland, Oregon
KTBY Poughkeepsi, New York
KREN Reno, Nevada
WKOI Richmond, Indiana
WAQP Saginaw, Michigan
KWEX San Antonio, Texas
KSCI San Bernadino, California
KDTV San Francisco, California
KTSF San Francisco, California
KTBN Santa Anna, California
CKSH Sherbrooke, Quebec (Canada)
WHME South Bend, Indiana
KTAJ St. Joseph, Missouri
KTBW Tacoma, Washington
K52AO Tucson, Arizona
KWHB Tulsa, Oklahoma

Dated: March 29, 1990.

**Ralph Oman,**

*Register of Copyrights.*

[FR Doc. 90-7688 Filed 4-3-90; 8:45 am]

BILLING CODE 1410-03-M

## LOWER MISSISSIPPI DELTA DEVELOPMENT COMMISSION

### Meeting

**Background**

The Lower Mississippi Delta Development Commission was created by Public Law 100-460, signed on October 1, 1988. The purpose of the Commission is to identify and study the economic development, infrastructure, employment, transportation, resource development, education, health care, housing, and recreation needs of the Lower Mississippi Delta region by seeking and encouraging the participation of interested citizens, public officials, groups, agencies, and others in developing a 10-year plan that makes recommendations and establishes priorities to alleviate the needs identified. The Commission will make its final report to Congress, the President, and the Governors of Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee no later than May 14, 1990.

This notice announces a Commission meeting only.

**Commission Meeting**

*Time:* 9 a.m., April 9, 1990.
*Place:* Excelsior Hotel, Little Rock, Arkansas.
*Status:* Open meeting.
*Contact:* Ron Register, Telephone (901) 753-1400.

**Wilbur F. Hawkins,**

*Executive Director.*

[FR Doc. 90-7694 Filed 4-3-90; 8:45 am]

BILLING CODE 6820-SN-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships Prescreening #1 Section) to the National Council on the Arts will be held on April 7-8, 1990, from 9 a.m.-5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is fo the purpose of Panel review, discussion, evaluation, and recommendation on applicants 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 determinations 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.

Dated: March 30, 1990.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 90-7884 Filed 4-2-90; 1:56 pm]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

### State of Illinois; Staff Assessment of Proposed Amendment Number One to the Agreement Between the Nuclear Regulatory Commission and the State of Illinois

**Note:** This document was originally published on March 28, 1990 at 55 FR 11459. It is republished at the request of the issuing agency.

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Proposed Amended Agreement with State of Illinois.

**SUMMARY:** Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is publishing for public comment the NRC staff assessment of a proposed amendent to the existing section 274b agreement between the NRC and the State of Illinois which became effective June 1, 1987. The request dated April 11, 1989 from Governor James R. Thompson of the State of Illinois, if approved, would permit Illinois to regulate byproduct materials as defined in section 11e.(2) of the Atomic Energy Act, as amended, (uranium or thorium mill tailings) in conformance with the requirements of section 274O of the Atomic Energy Act of 1954, as amended (the Act).

A staff assessment of the State's proposed radiation control program to implement the amended ageement is set forth below as supplementary information ot this notice. A copy of the complete program description submitted by Illinois, including a program statement prepared by the State describing the State's proposed program for control over byproduct materials as defined in section 11e.(2) of the Act, State legislation, and Illinois regulations, is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington, DC, the Commission's Region III Office at 799 Roosevelt Road, Building No. 4, Glen Ellyn, Illinois, and the Illinois Department of Nuclear Safety at 1035 Outer Park Drive, Springfield, Illinois. Exemptions from and reservations of the Commission's regulatory authority, which would implement this proposed amendment to the existing 274b agreement, have been published in the **Federal Register** and codified as Part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

**DATES:** Comments must be received on or before April 27, 1990.

**ADDRESSES:** Submit written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555. ATTN: Docketing and Services Branch. Comments may also be delivered to 11555 Rockville Pike, Rockville, Maryland from 7:45 a.m. to 4:15 p.m. Monday through Friday. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Vandy L. Miller, Assistant Director for State Agreements Program, U.S. Nuclear Regulatory Commission, Washington, DC. Telephone: 301–492–0326.

**SUPPLEMENTARY INFORMATION:** Assessment of proposed amended Illinois Program to regulate certain radioactive materials pursuant to section 274 of the Atomic Energy Act of 1954, as amended (the Act).

The Commission has received a proposal from the Governor of Illinois for the State to amend its agreement with the NRC whereby the NRC would relinquish and the State would assume regulatory authority for byproduct material, as defined in section 11e.(2) of the Act, pursuant to section 274 of the Act.

Section 274e of the Act requires that the terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the Federal Register.

## I. Background

A. Section 274 of the Act provides a mechanism whereby the NRC may transfer to the State certain regulatory authority over agreement materials [1] when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

The Uranium Mill Tailings Radiation Control Act of 1978 amended the requirements of section 274 of the Atomic Energy Act, by adding section 274o which imposed certain requirements that must be met by Agreement States in order to regulate uranium and thorium mill tailings after November 8, 1981.

B. On May 18, 1987, the Governor of Illinois signed an agreement with the NRC for the assumption of regulatory authority for byproduct material as defined in section 11e.(1) of the Act, source material, special nuclear material in quantities not sufficient to form a critical mass, and the land disposal of source, byproduct, and special nuclear material received from other persons. This agreement became effective on June 1, 1987. In a letter dated April 11, 1989, Governor James R. Thompson of the State of Illinois requested that the Commission entered into an amended agreement with the State pursuant to section 274 of the Act under which the State would assume responsibility for regulating uranium and thorium mill tailings (11e.(2) byproduct material) and the operations that generate such material. The Governor certified that the State of Illinois has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed amendment to the agreement, and that the State of Illinois desires to assume regulatory responsibility for such materials. The text of the proposed amendment to the agreement is shown in Appendix A.

The specific authority requested is for source material recovery activities including the uranium and thorium mill tailing (byproduct material as defined in section 11e.(2) of the Act). The proposed amemdment to the agreement covers the following areas:

1. Amending Article I of the Agreement of May 18, 1987 to add the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting by product material as defined in section 11e.(2) of the Act to the list of materials covered by the agreement.

2. Amending Article II of the Agreement of May 18, 1987 by inserting "A." before "This Agreement," by redesignation paragraphs A. thorugh D. as subparagraphs 1. through 4., by deleting paragraph E. releating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B. relating to authorities pertaining to byproduct as defined in section 11e.(2) of the Act that will by retained by the Commission.

3. Amending Article IX by redesignating it Article X and by inserting a new Article IX which requires compliance with 274o of the Act and specifies certain financial surety requirements in subparagraphs A. and B.

4. States that the Agreement of May 18, 1987 remains in effect except as modified by the above amendments.

5. Specifies the effective date of Amendment Number One.

The State has no active uranium or thorium mills processing ore for its source material content. However, one facility exists under an NRC license at West Chicago, Illinois. This mill began operation in 1931 to process ore containing thorium and rate earth metals.

Kerr-McGee Chemical Corporation (Kerr-McGee) acquired the facility in 1967 and operated it until closing the plant in 1973. In 1979 Kerr-McGee submitted a plan to the NRC for decommissioning the West Chicago site and stabilizing the accumulated waste and tailings. The plan was modified and the most recent version submitted to NRC in 1986. Besides onsite wastes and ore residuals, wastes are known to exist offsite as well. On August 5, 1988, the Commission issued a decision on the regulatory aspects of the radiologically contaminated material on and offsite. The Commission held: (1) The radiologically contaminated material in and along Kress Creek and the West Branch of the DuPage River was 11e.(2) byproduct material and, therefore, not within the scope of the section 274b agreement into which the Commission entered with Illinois in 1987, and remained within the regulatory authority of the Commission; and (2) the radiologically contaminated material in Reed-Keppler Park and certain residential areas of DuPage County, and the radiologically contaminated material returned from the West Chicago Sewage Treatment Pland and residential areas within the City of West Chicago to the West Chicago Rare Earths Facility Site, was source material that is within the scope of the agreement and was, therefore, under the regulatory authority of the State of Illinois.

In rendering this decision, the Commission upheld the position that the thorium-contaminated materials described in (2) above should be classified as source material. It further held that the thorium-contaminated material in Kress Creek should be classified as 113.(2) byproduct material. Consequently, in order for the State of Illinois to regulate the latter, the State of Illinois would need to have its existing

[1] A. Byproduct materials as defined in 11e.(1).
B. Byproduct materials as defined in 11e.(2).
C. Source materials; and
D. Special nuclear materials in quantities not sufficient to form a critical mass.

Agreement amended to demonstrate compliance with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. Details relating to the Rare Earths Facility are contained in the Final Environmental Statement (NUREG–0904, 1983) and the Supplement to the Final Envionmental Statement (NUREG–0904, Supplement No. 1, 1989) related to the decommissioning of the Rare Earths Facility, West Chicago, Illinois.

On February 13, 1990, the Atomic Safety and Licensing Board (Licensing Board) issued a decision directing the staff to issue a license amendment authorizing Kerr-McGee to dispose of the 11.e(2) byproduct material as proposed by Kerr-McGee in its application. The staff issued the amendment on February 23, 1990. The State of Illinois and the City of West Chicago each filed a Notice of Appeal before the Atomic Safety and Licensing Appeal Board (Appeal Board). The State of Illinois and the City of West Chicago also requested the Appeal Board to stay the Licensing Board's decision. The Appeal Board issued an Order on March 13, 1990 denying the State's and the City's requests for a stay.

C. Ill. Rev. Stat. 1985, ch. 127, par. 63b17, the enabling statute for the Illinois Department of Nuclear Safety (IDNS) and Ill. Rev. Stat. 1987, ch. 111½, par. 211–229, the Illinois Radiation Protection Act authorize the Department to issue licenses to, and perform inspections of, users of radioactive materials under the Agreement and otherwise carry out a total radiation control. Illinois regulations for radiation protection were adopted on September 25, 1986 under authority of the enabling statute and provide standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. These standards and procedures became effective on June 1, 1987, the effective date of the Agreement. As amended by P.A. 85–1160, effective August 5, 1988, the Illinois Radiation Protection Act authorizes the IDNS to regulate byproduct material as defined in section 11e.(2) of the Act. To provide for licensing of 11e.(2) byproduct material and source material recovery facilities which generate 11e.(2) byproduct material, a new Part 332 has been added to the Illinois Administrative Code (32 Ill. Adm. Code 332). These regulations were finalized on January 4, 1990 and will become effective when the Amendment Number One becomes effective. On February 6, 1990, Kerr-McGee sought judicial review of the final regulations in the Illinois courts (Kerr-McGee Chemical Corp. v. IDNS, No. 90MR49; Ill. Cir. Ct., Sangmon County). This proceeding is still pending.

On January 10, 1990, the Illinois General Assembly Joint Committee on Administrative Rules (JCAR) met and issued 13 objections to the final regulations for source material recovery and 1e.(2) byproduct material (32 Ill. Adm. Code 332). These objections were published in the Illinois Register on February 2, 1990. In accordance with Section 7.07 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1987, ch. 127, par. 1007.07), IDNS has 90 days to respond to the objections and, if IDNS does not respond within 90 days, the lack of response will constitute a refusal to amend or repeal this rule. Unless the JCAR drafts and introduces legislation requiring IDNS to implement the recommendations, no futher actions are required of IDNS.

D. On June 1, 1987, Illinois assumed regulatory authority for (1) byproduct material as defined in section 11e.(1) of the Act, (2) source material, (3) special nuclear material in quantities not sufficient to form a critical mass, and (4) permanent disposal of low-level radioactive waste containing one or more of the foregoing materials but not containing uranium and thorium mill tailings (byproduct material as defined in section 11e.(a) of the Act). The program audits conducted since that time have resulted in NRC findings that the Illinois radiation control program is compatible with that of the NRC and is adequate to protect public health and safety.

Illinois is one of two States with a cabinet-level agency devoted exclusively to radiation safety and control. Illinois' role in radiation safety is traceable to 1955 when the Illinois General Assembly created the Atomic Power Investigating Commission. The Illinois Department of Nuclear Safety Program provides a comprehensive program encompassing radiation protection regulations for radioactive materials and machine produced radiation, lasers, low-level radioactive waste management, surveillance of transportation of radioactive materials and environmental radiation, coordination of State government functions concerning nuclear power and emergency preparedness.

E. The proposed amendment to the Illinois agreement will cover the regulation of source material extraction from ores processed primarily for their source material content and the management and disposal of the resulting tailings and other wastes (byproduct material as defined in section 11e.(2) of the Act). The State's proposed program for the regulation of source material extraction and 11e.(2) byproduct material is assessed under Criteria 29 through 36 of the guidelines published by NRC, Criteria for Guidance of States and NRC is Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.[2] These criteria are specifically identified as "Additional Criteria for States Regulating Uranium or Thorium Processors and Wastes Resulting Therefrom After November 8, 1981" and addressed the Statutes, Regulations, Organizational Relationships Within the States, Personnel, Functions To Be Covered, and Instrumentation. Prior evaluation of the Illinois program in accordance with Criteria 1 through 28, was addressed in the staff assessment of the original Illinois proposed agreement published in the Federal Register on January 21, 1987 (52 FR 2309–2324).

## II. NRC Staff Assessment of the Proposed Illinois' Radiation Control Program for Control of Uranium and Thorium Processors and the Waste Resulting Therefrom

*Reference:* Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.[2]

### *A. Statutes*

29. State statutes or duly promulgated regulations should be enacted, if not already in place, to make clear State authority to carry out the requirements of Public Law 95–604, Uranium Mill Tailings Radiation Control Act, as amended (UMTRCA).

Based on the analysis of the State's revised statutes, regulations, and the State's program statement, the staff concludes that the Illinois Radiation Protection Act and the State's implementing regulations provide adequate authority for Illinois to regulate section 11e.(2) byproduct material in accordance with the requirements of the Uranium Mill Tailings Radiation Control Act, as amended. The Radiation Protection Act requires the IDNS to provide, by rule or regulation, standards for the protection of the public health and safety and the environment that are equivalent, to the extent practicable, or more stringent than, the standards adopted and

[2] NRC Statement of Policy published in the Federal Register January 23, 1981 (46 FR 7540–7546), a correction was published July 16, 1981 (46 FR 36969) and a revision of Criterion 9 published in the Federal Register July 21, 1983 (48 FR 33376).

enforced by NRC for 11e.(2) byproduct material, including standards issued by the Environmental Protection Agency (EPA). The Illinois Radiation Protection Act also authorizes IDNS to require licensees to provide adequate financial surety to assure that all of the IDNS requirements for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in connection with the generation or disposal of section 11e(2) byproduct material have been met. Authority is also provided to transfer to the Federal government funds which have been collected by the State for long-term surveillance and maintenance if custody of the byproduct material and its disposal site is transferred to the Federal government. Provisions of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, par. 1005) and Illinois regulations (32 Ill. Adm. Code Parts 200 and 332) implement the procedural requirements for the issuance of licenses and rules prescribed in sections 274o(3) (A) and (B) of the Act, and identified in Criterion 29d., e., and g. These requirements relate to such matters as opportunity for written comments, public hearings, cross examination, and judicial review.

*Reference:* Ill. Rev. Stat. 1985, ch. 127, par. 63b17 and 1005; Ill. Reve. Stat. 1987, ch. 111½, par. 211–229, as amended by P.A. 85–1160; 32 Ill. Adm. Code Parts 200 and 332.

30. In the enactment of any supporting legislation, the State should take into account the reservations of authority to the Commission UMTRCA as stated in 10 CFR 150.15a.

The staff has reviewed the Illinois Radiation Protection Act, as amended, and has determined that these reservations of authority to the Commission are incorporated in the Illinois statute and are adequately discussed in the program statement.

*References:* Ill. Rev. Stat. 1987, ch. 111½, par. 211–229, as amended; Illinois Program Statement: Application to Amend the Agreement Between Illinois and the U.S. Nuclear Regulatory Commission.

31. Section 274o(3)(C) of the Act requires that in the licensing and regulation of ores processed primarily for their source material content and for the disposal of the resulting byproduct material, States shall establish procedures which provide a written analysis of the impact on the environment of the licensing activity. This analysis shall be available to the public before commencement of hearings and shall include:

a. An assessment of the radiological and nonradiological public health impacts;

b. An assessment of any impact on any body of water or groundwater;

c. Consideration of alternatives to the licensed activities; and,

d. Consideration of long-term impacts of licensed activities.

The State's statutes and its implementing regulations provide sufficient authority for the IDNS to comply with the environmental assessment procedures required by UMTRCA. Part 332 of Illinois regulations (section 332.100) addresses the procedural requirements for environmental assessments and defines the scope of assessments and associated administrative procedures. In accordance with Criterion 29f., section 332.100 of the Illinois regulations bans major construction prior to completion of the environmental analysis.

*References:* Illinois Program Statement, Application to Amend the Agreement Between Illinois and the U.S. Nuclear Regulatory Commission; Ill. Rev. Stat. 1987, ch. 111½, par. 211–229, as amended by P.A.85–1160; 32 Ill. Adm. Code Part 332.

*B. Regulations*

32. State regulations should be reviewed for regulatory requirements, and where necessary incorporate regulatory language which is equivalent, to the extent practicable, or more stringent than regulations and standards adopted and enforced by the Commission, as required by section 274o (see 10 CFR 40, Appendix A, and 10 CFR 150.31(b)).

On January 10, 1990 (effective date: January 4, 1990), final Illinois regulations (32 Ill. Adm. Code Part 332) were submitted to NRC completing the Governor's package submitted April 11, 1989. These final regulations establish State regulations that are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Environmental Protection Agency. It is the staff's opinion that these rules have, to the maximum extent practicable, achieved the same objective as the NRC's Part 40 regulations except that certain parts of the State regulations are more stringent than the NRC regulations and are, therefore, more restrictive than NRC regulations. The staff has identified State requirements which NRC does not address in its regulations that may also be considered to be more stringent than NRC requirements. The sections are identified below. The staff is proposing to find the following sections more stringent and in accord with section 274o of the Act only for the purpose of finding the Illinois program adequate, compatible and in compliance with statutory requirements so that authority may be relinquished lawfully to the State. The staff offers no opinion whether, as applied to any particular site, the findings required by the last paragraph of section 274o can be made.

Criteria which are more stringent than 10 CFR part 40:

1. Part 332—This part of the Illinois regulations is considered more stringent in that it does not contain a specific exemption provision such as 10 CFR 40.14(a.) or a provision for approving alternatives to these regulations such as provided for in the Introduction of appendix A to 10 CFR part 40.

2. Section 332.70—This section is considered more stringent in that the NRC performance standards have been written as technical criteria thereby eliminating the flexibility inherent in NRC regulations.

3. Section 332.170c)—This section is considered more stringent in that the annual average total radon release rate of 2 picocurie per square meter per second flux limit is more stringent than the 20 picocurie per meter square per second limit in criterion 6 of appendix A to 10 CFR part 40.

4. Subsection 332.210b)1)—This subsection banning disposal sites within a distance of 2.5 km of any municipality without the consent of the municipality is more stringent than NRC's performance objective of locating disposal sites in remote areas.

5. Section 332.220b)1)—This section is considered more stringent in that it does not allow slopes steeper than 10h:1v.

6. Section 332.240—This section is considered more stringent in that the licensee must defend its design as a 1000 year design. This section does not have the flexibility of criterion 6 of appendix A to 10 CFR part 40 that states following the 1000-year criterion, "to the extent reasonably achievable, and, in any case, for at least 200 years."

7. Section 332.250 b) and c)—subsection b) is considered more stringent in that it requires chemical treatment of the tailings which is not required in Appendix A to 10 CFR Part 40. Subsection c) is considered more stringent in that it requires groundwater restoration to levels consistent with those before operations. NRC Criterion 5B(5)(b) and (c) allows concentration values up to EPA drinking limits.

Criteria which are not in NRC's 10 CFR part 40 regulations:

1. *Section 332.20*—Definition of Buffer Zone.

2. *Section 332.20*—Definition of Minor Custodial Activities.

3. *Section 332.20*—Definition of Postclosure.

4. *Section 332.20*—Definition of Reclamation. This term is used in 10 CFR Part 40; however, this definition is not in NRC's regulations.

5. *Section 332.140*—This criterion is not in 10 CFR part 40; however, it is generally consistent with NRC's licensing practice.

6. *Section 332.170 b)*—This criterion is not in 10 CFR part 50; however, it is consistent with 10 CFR 20.106(a).

7. *Section 332.180*—This criterion is not in 10 CFR part 40.

8. *Section 332.210*—The siting criteria in subparts (b) (1), (2), (3), (6), and (7) are not contained in 10 CFR part 40.

9. *Section 332.250 (a)*—Such a ban of release of liquids is not in NRC's regulations.

10. *Section 332.290 (e)*—No annual financial report is required by NRC.

*Reference:* 32 Ill. Adm. Code part 332.

*C. Organizational Relationships Within the State*

33. Organizational relationships should be established which will provide for an effective regulatory program for uranium mills and mill tailings. Charts should be developed which show the management organization and lines of authority. These charts should define the specific lines of supervision from program management within the radiation control group and any other department within the State responsible for contributing to the regulation of source material processing and disposal of the resulting tailings. When other State agencies or regional offices are utilized, the lines of communication and administrative control between other agencies and/or regions and the program director should be clearly drawn.

Organizational charts outlining the IDNS structure have been included in the application. From these organizational charts, it has been determined that the IDNS has a structure capable of regulating all phases of source material milling activities including the preparation of environmental assessments. This conclusion is based on the following findings: (1) The Office of Radiation Safety has been designated as the lead office within IDNS for regulating uranium and thorium processing and the resulting 11e.(2) byproduct material; and (2) the administrative, technical, legal and emergency support functions will be provided from other offices within IDNS, i.e., Office of Legal Counsel, Office of Environmental Safety, Office of Nuclear Facility Safety, and Office of Administrative Services.

Internal responsibilities have been described by the IDNS to be as follows: (1) overall program management will be implemented by the Director; (2) the Office of Radiation Safety is responsible for the licensing of radioactive materials and will be the lead office for processing all license applications and preparation of environmental assessments; (3) the Office of Environmental Safety is to assist in the evaluation of environmental impacts and to provide support for all laboratory analysis and environmental monitoring; (4) the Office of Nuclear Facility Safety will assist in the evaluation of potential radiological accidents; (5) the Office of Legal Counsel will provide assistance in all legal matters; and (6) the Office of Administrative Services will assist in budgeting and personnel management. IDNS has further stated that for those areas of environmental assessments that IDNS believes consultation to be appropriate, other State agencies or private consultants will be contracted to help in the environmental assessment. IDNS has indicated that assistance from the Illinois Department of Energy and Natural Resources and the State Water Survey Division may be sought for hydrologic assessments. NRC staff notes that the IDNS did not provide any formal agreements, such as MOUs with any of these other organizations that, if put in place, would assure their availability in a timely manner. However, IDNS has previously executed contracts with other State agencies. As an example, IDNS has executed an MOU with the Illinois Environmental Protection Agency regarding the disposal of water treatment wastes. Although the program statement did not specifically identify the source or amount of funds, it did state that IDNS will provide for funding if consultants are deemed necessary and the Office of Administrative Services will assist in contract preparation and fiscal management. For those situations where consultants are used, IDNS stated that they will seek assistance from their legal counsel to avoid conflicts of interest. IDNS has not provided any specific information about the budget or proposed budget for the portion of the radiation control program allocated to the regulation of uranium and thorium mills and 11e.(2) byproduct material. However, the IDNS has committed to the allocation of sufficient staff time to handle the uranium and thorium mills and 11e.(2) byproduct material currently in the State.

The program statement reveals that IDNS has not identified any specific medical consultants that would be available for medical questions that may be encountered with the uranium or thorium milling industry and its 11e.(2) byproduct material. The program statement states that, should medical assistance be needed, IDNS will seek assistance from a national laboratory such as Argonne National Laboratory. Such assistance has been requested and provided in the past.

Experience has shown that a scoping document is a valuable tool for bringing an environmental assessment to a satisfactory conclusion. IDNS indicated that if assistance is requested through contracts or MOUs adequate guidance such as a scoping document will be prepared by the IDNS. This document will delineate areas and scope of work to be performed within a given time constraint by each participating agency or contractor.

*Reference:* Illinois Program Statement, Section III.

*D. Personnel*

34. Personnel needed in the processing of the license application can be identified or grouped according to the following skills: Technical, Administrative, and Support.

In order to meet the requirements of UMTRCA, it is estimated that on the order of 2 to 2.75 total professional person-years' effort is necessary to process and evaluate a new conventional mill license, in-situ license, or major license renewal. A complete review of in-plant safety, completion of an environmental assessment, and use of consultants in these assessments are primary considerations in the the total professional effort for each licensing case. With respect to clerical support, one secretary is usually required to process two conventional milling applications. Legal support is also an essential element of the mill program, and the effort is believed to be a minimum of one-half staff year. In addition, consideration must be given to such post-licensing activities as issuance of monor amendments, mill inspection, and environmental monitoring. Professional staff effort for these activities is estimated at 0.5 to 1.0 person-years for each year of post-licensing activities.

Currently there are no active uranium or thorium mills processing ore for its source material content in the State of Illinois. However, as identified in the introduction, one facility located at

West Chicago has been identified as a closed facility which has associated with it radiologically contaminated material on and offsite. As stated earlier, the radiologically contaminated material in and along Kress Creek and the West Branch of the DuPage River is 11e.(2) byproduct material in addition to the material on the West Chicago site. This material would come under the regulatory authority of the IDNS upon consummation of Illinois request for an amended agreement. The regulatory activities assumed by the IDNS upon execution of the amended agreement would center mainly around decommissioning and reclamation of the West Chicago site and its associated wastes.

In the application for amendment of the agreement as updated March 14, 1990, the IDNS had identified 11 key technical personel for use in regulation uranium and thorium processing facilities and their associated 11e.(2) byproduct material. A review of these staff resumes shows that they have the necessary education, training, and experience to ensure effective implementation of a regulatory program.

Seven key administrative personnel have been identified by the IDNS who will provide the necessary management guidance and policy direction necessary to assure completion of the licensing action. The positions of the seven personnel in the IDNS structure are the director, four office managers, one assistant office manager, and one division chief.

Four key persons have been identified as providing operational support, legal support, and laboratory services. The positions of these four people are one chief legal counsel, one senior staff attorney, one section chief of radioecology, and one division chief of radiochemistry.

The NRC staff has concluded that the total professional staff-years effort which is available within the IDNS and will be directly responsible for regulating uranium and thorium mills and 11e.(2) byproduct material is within the guidelines and consists of the necessary specialities for evaluating license applications. Additionally, IDNS has states that consultants will be utilized, if necessary.

Abridged versions of the curricula vitae for key IDNS personnel involved in the regulation of source material milling facilities and 11e.(2) byproduct material are as follows (as updated by IDNS on March 14, 1990):

Administrative Personnel:

T.L. Lash, Ph.D.—Director, IDNS: Ph.D. Molecular Biophysics and Biochemistry, Yale University; M.Ph. Molecular Biophysics and Biochemistry, Yale University; B.A. Physics, Reed College. Work Experinece, 1970 to present, held positions as Postdoctoral Fellow, Yale University; Staff Scientist, NRDC; Director, Science and Public Policy, the Keystone Center; Science Director, Scientists' Institute for Public Information; Deputy Director, IDNS, and Director, IDNS.

P.D. Eastvold—Manager, Office of Radiation Safety; B.S. General Science/ Nuclear Medical Technology, University of Iowa. Work Experience, 1970 to present, held positions in the Radiation Protection Office, University of Iowa; Illinois Department of Public Health; and as Manager, Office of Radiation Safety, IDNS.

G.W. Kerr, CHP—Assistant Office Manager, Office of Radiation Safety; M.A. Economics, Trinity College; B.A. Biology, Peru State College. Work Experience, 1956 to present, held positions as Senior Industrial Hygienist, Pratt and Whitney Aircraft; Technical staff positions, Atomic Energy Commission; Manager and Assistant Director for State Agreements, USNRC; Director, Office of State Programs, USNRC; Independent Consultant; and Assistant Office Manager, Office of Radiation Safety, IDNS.

C.W. Miller, Ph.D—Manager, Office of Environmental Safety; Ph.D. Bionucleonics/Health Physics, Purdue University; M.S. Meteorology, University of Michigan; B.S. Physics/Math, Ball State University. Work Experience, 1967 to present, held positions in Anderson College in Physics; Health and Safety Research Division, Oak Ridge National Laboratory; and as Nuclear Safety Scientist, Office of Nuclear Facility Safety; and Manager, Office of Environmental Safety, IDNS.

R.R. Wright—Manager, Office of Nuclear Facility Safety; Master of Public Administration, American University; B.S. Engineering, U.S. Naval Academy; Undergraduate Studies, Geology, Oklahoma University. Work Experience, 1954 to present, held positions in U.S. Navy, Nuclear Propulsion plants, Nuclear Submarines and Nuclear Weapons; Advance Science and Technology Associates Inc.; and as Manager, Office of Nuclear Facility Safety, IDNS.

D.A. Joswiak—Manager, Office of Administrative Services; M.S. Business Public Management, University of Wisconsin; M.A. Public Policy and Administration, University of Wisconsin; B.A. Political Science and Economics, University of Wisconsin. Work Experience, 1973 to present, held positions as Research Assistant, Public Expenditure Survey of Wisconsin, Inc.; Budget Analyst and Management Systems Specialist, Illinois Department of Transportation; Chief Fiscal Officer, Illinois Department of Financial Institutions; Associate Director for Administration, Illinois Emergency Services and Disaster Agency; and Manager, Office of Administrative Services, IDNS.

S.C. Collins—Chief, Division of Radioactive Materials; M.S. Radiation Science (health physics), Unversity of Arkansas School of Medical Sciences; B.A. Mathematics/Chemistry, Arkansas Tech University. Work Experience, 1967 to present, held positions as laboratory assistant and instructor, Arkansas Tech University; Health Physicist II, Arkansas State Department of Health; Nuclear Medical Science Office, U.S. Army Reserve; Public Health Physicist II, Florida Division of Health; Radiation Specialist IV, Louisiana Nuclear Energy Division; Environmental Program Manager, Louisiana Nuclear Energy Division; Nuclear Medical Science Instructor, U.S. Army Academy of Health Sciences; Radiation Protection Program Manager, Louisiana Nuclear Energy Division; and Chief, Division of Radioactive Materials, IDNS.

Administrative Support Personnel:

S.J. England—Chief Legal Counsel, Office of Legal Counsel; J.D. Boston University School of Law; B.A. University of Illinois. Work Experience, 1976 to present, held positions in City of Joliet, Illinois; Illinois Attorney General's office; Illinois Department of Transportation; and as Chief Legal Counsel, Office of Legal Counsel, IDNS.

B.P. Salus—Senior Staff Attorney, Office of Legal Counsel; J.D. Washington University School of Law; B.S. Vanderbilt University. Work Experience, 1984 to present, positions as Research Assistant, Washington University School of Law; Law Clerk to Chief Judge, U.S. District Court; and Staff Attorney, Office of Legal Counsel, IDNS.

R.A. Allen—Office of Environmental Safety; B.A. Biological Sciences, Rutgers University. Work experience, 1976 to present, held positions as Health Physicist and R.S.O., Roche Medi+Physics; Environmental Protection Group Leader, Fermi National Accelerator Laboratory; and Radioecology Section Head, Office of Environmental Safety, IDNS.

Lih-Ching Chu, Ph.D.—Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety; Ph.D, Chemistry, Washington University; M.A. Chemistry, Washington University; M.S. Chemistry, East Texas State University; B.S. Chemistry, Tankang College of Arts

and Sciences. Work Experience, 1971 to present, held positions in Taiwan Military, ROC; Young-Ho Middle School, Taiwan; East Texas State University; Washington University, St. Louis; Illinois Department of Energy and Natural Resources; and as Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety, IDNS.

Technical Personnel:

J.G. Klinger—Head, Licensing Section, IDNS: M.S. Health Care Management and Public Administration, Southwest Texas State University; B.A. Microbiology and Chemistry, University of Texas; A.A. Glendale Community College. Work Experience, 1966 to present, held positions in U.S. Marine Corps and U.S. Naval Reserve Medical Service Corps; Algebra Tutor, Glendale; Laboratory Assistant, University of Texas; Food and Drug Inspector, Texas Department of Health; Regional Food and Drug Supervisor, Texas Department of Health; Chief of Food Control, Division of Food and Drugs, Texas Department of Health; Special Assistant to the Commissioner for Board of Health Affairs, Texas Department of Health; Administrator, Licensing Branch, Bureau of Radiation Control, Texas Department of Health; and Head, Licensing Section, IDNS.

D.F. Harmon—Licensing, Office of Radiation Safety, IDNS; M.S. Physics, Vanderbilt University; B.S. Physics, Tennessee Technological University. Work Experience, 1954 to present, held positions in Military Service, U.S. Army; Ballistics Research Laboratory, Aberdeen Proving Ground, Maryland and Camp Mercury, Nevada Test Site; Chemistry Department, Vanderbilt University; Radiation Safety Branch, Division of Licensing and Regulations, U.S. NRC; Source and Special Nuclear Materials Branch, Division of Materials Licensing, U.S. NRC; Materials Branch, Division of Materials Licensing, U.S NRC; Fuels and Materials Standards Branch, Directorate of Regulatory Standards, U.S. NRC; Fuels Process System Standards Branch, Office of Standards Development, U.S. NRC; Waste Management Branch, Office of Nuclear Regulatory Research, U.S. NRC; Health Effects Branch, Office of Nuclear Regulatory Research, U.S. NRC; and Licensing, Office of Radiation Safety, IDNS.

M.H. Momeni, Ph.D.—Office of Radiation Safety, IDNS; Ph.D., Biophysics/Radiation Biology, University of Iowa; M.S. Nuclear Physics, University of Iowa; B.A. Physics/Mathematics, Luther College. Work Experience, 1962 to present, held positions as Science Teacher, Urbana Consolidated Schools; Biophysicist-Lecturer, University of California, Davis; Senior Scientist, Argonne National Laboratory; Professor and Director of Health Physics Program, San Diego State University; Scientist, Oak Ridge Associated Universities; and Health Physicists, Office of Radiation Safety, IDNS.

D.J. Scherer—Licensing, Office of Radiation Safety; M.S. Physics, Virginia Polytechnic Institute and State University; B.S. Physics, Virginia Military Institute. Work Experience, 1980 to present, held positions as graduate Teaching Assistant, VPISU; Graduate Research Assistant, Stanford Linear Accelerator Center; Nuclear Medical Science Officer, U.S. Environmental Hygiene Agency; Medical Plans Officer, Officer of the Surgeon, XVIII Airborne Corps; Chief, Health Physics Section, Womback Army Community Hospital; Assistant Health Physicist, Princeton University; Senior Health Physicist and Radiation Safety Officer, Albany Medical Center; and Health Physicist, Office of Radiation Safety, IDNS.

D.A. Huckaba, P.E.— Office of Radiation Safety; B.S. Civil Engineering, University of Missouri. Work Experience, 1969 to present, held positions as Highway Engineer, Missouri Department of Transportation; Chief Highway Engineer, MTA, Inc.; and Engineer, Office of Radiation Safety, IDNS.

G.N. Wright, P.E.—Office of Nuclear Facility Safety; Degree Work in Public Administration, Sangamon State University; M.S. Nuclear Engineering, University of Illinois; B.S. Physics/Mathematics, Milliken University. Work experience, 1965 to present, held positions in Westinghouse Electric Company; Sangamo-Weston Electronics Company; Illinois Department of Public Health; and as Senior Nuclar Engineer, Office of Radiation Safety, IDNS.

D.D. Ed—Office of Environmental Safety; B.S. Chemistry, University of Illinois. Work experience, 1972 to present, held positions in Illinois Environmental Protection Agency, Illinois Department of Public Health; and as Nuclear Safety Scientist, Office of Environmental Safety, IDNS.

T.A. Kerr—Chief, Division of Low-Level Waste Management, Office of Environmental Safety; Business Administration, University of North Carolina. Work Experience 1973 to present, held positions in U.S. Navy, Electronics Technician-Reactor operator; Supervisor Solidification Services, Chem-Nuclear Systems, Inc.; Associate Instructor, Duke Power Co.; and as Chief, Division of Low-Level Waste Management, IDNS.

M.E. Klebe, P.E.—Office of Environmental Safety; M.S. Mining Engineering, Montana College of Mineral Science and Technology; B.S. Mining Engineering, Montana College of Mineral Science and Technology. Work Experience, 1982 to present, held positions as Mining Engineer, Shell Mining Co; and Nuclear Safety Engineer, Office of Environmental Safety, IDNS.

C.G. Vinson—Office of Radiation Safety: B.S. Biology, Furman University. Work Experience, 1983 to present, held positions as Industrial Hygiene Technician, J.P. Stevens Textile Company; Environmental Engineering Specialist, Union Camp Corporation; Health Physicist and Section Manager, Bureau of Radiological Health, South Carolina Department of Health and Enironmental Control; and Health Physicist, Office of Radiation Safety, IDNS.

M. Walle—Office of Radiation Safety; B.S. Earth Sciences, Unviversity of New Orleans; ARRT, Mercy Hospital School of X-Ray Technology. Work Experience, 1965 to present, held positions as Radiological Technologist, Mercy Hospital; Nuclear Medicine Technologist, Pathology Medical Services, PC; Engineering-Geologist, U.S. Army Corps of Engineers; Civil Materials Technican, Geo, International; Civil Construction Inspector, Minority Engineers of Louisiana; Project Manager, Nuclear Gauge Radiation Safety Officer, U.S. Testing Co., Inc.; and Health Physicist, Office of Radiation Safety, IDNS.

IDNS recognizes that a skilled and experienced staff is essential to accomplishing its mission. Consequently, technical training is a high priority for the IDNS. The IDNS training coordinator is developing a comprehensive technical and managerial training program, using a wide variety of professional seminars and courses. Courses may be sponsored by either government or private sector organizations. In addition, in-house courses to supplement outside training are arranged as necessary. These in-house courses are presented either by IDNS staff or outside contractors.

The IDNS has stated that for active extraction and concentration facilities it will allocate from 2.5 to 5.75 person-years for each major licensing action. This time will be apportioned as follows: 2 to 2.75 staff years effort for technical and administrative activities; 0.5 to 1 staff year effort for legal support; and 2 staff years effort for clerical support.

Following initial licensure, IDNS plans to assign an annual average of from 0.5 to 1 full-time equivalent staffing for each license. This allocation is for inspections, environmental assessments, minor amendments and environmental surveillance. IDNS anticipates that less time might be required to administer a license authorizing only decontamination, decommissioning, disposal, or post-closure monitoring. This appears to be a reasonable assumption on the part of IDNS.

Many of these key personnel have complementary training to their profession and several have been identified as having training in uranium mill related topics. Some of these individuals have written or published articles on uranium mill topics. The IDNS has stated that it will consult with other State agencies. Two State agencies have been identified by the IDNS at this time as providing the IDNS assistance in reviewing the impact of byproduct material on the environment. They are the Illinois Department of Energy and Natural Resources and the Illinois Environmental Protection Agency. However, the scope and depth of work to be completed by these agencies has not been identified. Because there are no indications that any uranium milling facilities are planning to operate in Illinois at this time, and because much environmental assessment work has been completed for the Kerr-McGee site, the lack of MOUs with other State agencies is not considered a matter of paramount importance at this time. The IDNS can pursue this matter at some point in the future upon first indication that such MOUs will be necessary.

*References:* Illinois Program Statement, Section IV, "Personnel," Section VI, "Implementation of the Regulatory Program," and Appendices F. and G.

*E. Functions to be Covered*

35. The State should develop procedures for licensing, inspection, preparation of environmental assessments, and operational data review.

The IDNS has stated that regulation of recovery and processing of uranium and thorium and management of 11e.(2) byproduct material may be divided into four stages: licensing, environmental assessments, inspection and enforcement, and review of operational data.

a. Licensing

The licensing evaluation or assessment should include in-plant radiological safety aspects in occupational or restricted areas and environmental impacts to populations in unrestricted areas from the facility. It is expected that the State will review, evaluate and provide documentation of these evaluations.

The IDNS has stated in its program statement that the IDNS licensing evaluations or assessments will include radiological safety aspects in occupational or restricted areas and environmental impacts to population in unrestricted areas surrounding the facilities. IDNS has stated that they will review and evaluate license applications and prepare documentation of the evaluations. The IDNS evaluation will include, as necessary, pre-licensing visits to obtain relevant information directly. Items to be evaluated include, but are not limited to, the following: general statement of proposed activities; scope of the proposed action; specific activities to be conducted; administrative procedures; facility organization and radiological safety responsibilities, authorities, and personnel qualifications; licensee audits and inspections, radiation safety program, control and monitoring; radiation safety training programs for workers; restricted area markings and access control; at existing mills, review of monitoring data, exposure records, licensee audit and inspection records, and other records applicable to existing mills; environmental monitoring; radiological emergency procedures; product transportation; tailings management facilities and procedures; site and physcial plant decommissioning procedures other than tailings; and employee exposure date and bioassay programs.

b. Environmental Assessments

The environmental evaluation should consist of a detailed and documented evaluation of the items listed in subsection 274o of the Act.

IDNS regulations, part 332, establish requirements for environmental assessments that define the scope of the assessments and specify associated administrative procedures. Part 332 requires that the following topics be included in the environmental assessment: an analysis of the radiological and nonradiological public health impacts; an analysis of any impact on surface water or groundwater; consideration of alternatives to the licensed activities; and consideration of long-term impacts of licensed activities. The IDNS has stated in their program statement that environmental assessments will consist, at a minimum, of detailed and documented evaluations of the following items: Topography; Geology; Hydrology and water quality; Meteorology; Background radiation; Tailings retention system; Interim stabilization, Reclamation; Site decommissioning programs; Radiological dose assessment which addresses source terms, exposure pathways, dose commitment to individuals, dose commitment to the population, evaluation of radiological impacts to the public to include a determination of compliance with State and Federal regulations and comparisions with background values, occupational dose, and radiological impact to biota other than man; Radiological monitoring programs to include pre-operational, operational, and post-operational monitoring; Impacts to quality and quantity of surface and groundwater; Environmental effects of accidents; and Evaluation of tailings management alternatives in terms of Illinois Regulations, part 332.

IDNS has also stated in their program statement that they will also examine the following items during preparation of environmental assessments: Ecology; Environmental effects of site preparation and facility construction; Environmental effects or use and discharge of chemicals and fuels; and Economic and social effects.

Although the IDNS regulations do not explicitly request the licensee to prepare a document called an Environmental Report, the regulations do require the licensee to provide the information in and to perform the anlayses normally done in an Environmental Report.

c. Inspection and Enforcement

As a minimum, items which should be covered during the inspection of a uranium or thorium mill should be those items evaluated in the in-plant safety review, the environmental monitoring programs, and the byproduct material management plan. In addition, the inspector should perform independent surveys and sampling. A complete inspection should be performed at least once per year.

The IDNS has stated items examined during inspections will be consistent with items evaluated during licensing. IDNS will use appropriate NRC regulatory and inspection guides for guidance. A complete inspection is to be performed at least annually. As part of the IDNS inspection program, the inspectors will perform independent surveys and sampling in addition to examining aspects of licensee performance in: Administration; Mill processes including any additions, deletions, or operational changes;

Accidents/incidents; Notices, instructions, and reports to workers in accordance with 32 Ill. Adm. Code 400; Action taken on previous findings; A tour of the facilities at the mill including tailings and waste management to determine compliance with regulations and license conditions; Records; Respiratory protection and bioassay to determine compliance with license conditions and 32 Ill. Adm. Code 340; Effluent and environmental monitoring; Training programs; Transportation and shipping; and Internal review and audit by management. Following each inspection, the inspector will confer with licensee representatives to inform them of the inspection results. The inspectors will submit a comprehensive written report to the Springfield headquarters describing inspection findings and detailing any apparent violations.

The IDNS enforcement policy is described as follows: The IDNS states that the purpose of the enforcement program is to: ensure compliance with Departmental regulations and license conditions; obtain prompt correction of violations and adverse conditions that may affect safety; deter future violations and occurrences of conditions inimical to safety; and encourage improvement of licensee performance, including prompt identification and reporting of potential safety problems.

The IDNS enforcement procedures have been described as follows: If IDNS discovers any deficiencies during an inspection, IDNS will send the licensee a written notice itemizing the area(s) of deficiency and will require the licensee to submit within 30 days of the date of the notice a written response which will state the corrective steps that have been taken by the licensee and the results achieved; the corrective steps that will be taken; and the date when full compliance will be achieved. If the licensee fails to provide an adequate response to the written notice, the IDNS normally holds a management conference with the licensee prior to taking enforcement action. The purpose of these conferences is to discuss items of deficiency or nonconformance, their significance and causes, and the licensee's corrective action. If compliance cannot be achieved through these informal conferences, IDNS will take more formal enforcement action. All non-emergency enforcement actions will be initiated by the issuance of a Preliminary Order and Notice of Opportunity for Hearing as afforded by Code 200 of the Illinois' regulations. The Order will itemize the alleged violations and direct the licensee to remedy these violations within a given time unless a hearing is requested within 10 days of the date of the Preliminary Order. In addition, the licensee may request an informal conference prior to or during the hearing. In cases where there is an imminent threat to public health and safety, IDNS has stated it is prepared to take immediate action in accordance with State law. State law provides that, if the IDNS finds that a condition exists which constitutes an immediate threat to public health due to the violation of any provisions of the Radiation Protection Act or any code, rule, regulation or order promulgated under the Radiation Protection Act and requires immediate action to protect the public health or welfare, IDNS may issue an order reciting the existence of such an immediate threat and the findings of the IDNS pertaining to the threat. The IDNS may summarily cause the abatement of such violation or may direct the Attorney General to obtain an injunction against such violator. An abatement order will be effective immediately, but will include notice of the time and place of a public hearing before the IDNS to be held within 30 days of the date of such order to assure the justification of such order. The IDNS has exercised this authority on two occasions since becoming an Agreement State. The first was in response to widespread facility contamination from leaking static eliminators, and the second was to remediate a health and safety hazard caused by inadequate radiation safety practices of a licensee.

Other remedial actions available to IDNS include orders to modify, suspend, or revoke licenses, assessment of civil penalties, and impoundment of radiation sources. Also, licenses may be modified, suspended or revoked to remove a threat to public health and safety and the environment and for any reason for which license modification, suspension, or revocation is legally authorized.

No order of the IDNS, except an order to abate an immediate threat to health, will take effect until the IDNS has found upon conclusion of such hearing that a condition exists which constitutes a violation of any provision of the Radiation Protection Act or any code, rule or regulation promulgated under the Radiation Protection Act except in the event that the right to public hearing has been waived by the licensee, in which case the order shall take effect immediately. Follow-up inspections are to be conducted as necessary by IDNS staff to verify compliance with IDNS rules and enforcement orders and to rule out willful or flagrant violations, repeated poor performance in areas of concern, and serious breakdown in management controls. All previous areas of deficiency will also be given special attention by the inspector during the following routine inspection of the facility.

As a result of program reviews conducted on December 7–18, 1987 and January 29 through February 9, 1990, the NRC staff concluded that the IDNS has an acceptable licensing program which is capable of determining whether a licensee or applicant can operate safely and in compliance with the regulations and license conditions. Likewise, during these program reviews, the NRC staff concluded that the IDNS has an acceptable compliance program which assures that licensee activities are being conducted in compliance with regulatory requirements and consistent with good safety practices.

d. Operational Data Review

To enhance radiological assessment capability and to confirm doses to receptors in unrestricted areas, States should require the semiannual reports, preferably within 60 days after January 1, and July 1, of each year, specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous six months of operation. This data shall be reported in a manner that will permit the regulatory agency to confirm the potential annual radiation does to the public. Additionally, all data from the radiological and non-radiological environmental monitoring program will also be submitted for the same time periods and frequency. The data will be reported in a manner that will allow the regulatory agency to confirm the dose to receptors.

IDNS has stated that according to 32 I11. Adm. Code 332, IDNS will require licensees to submit written reports at least semiannualy that identify quantities of redionuclides released to unrestricted areas in liquid, gaseous, and particulate effluents during specified periods of operation. IDNS will also require submission of data from licensee environmental monitoring programs. Written reports and data must be for identical periods and frequencies and in a form permitting confirmation of potential annual radiation doses to the public.

Section 332.290f of 32 Ill. Adm. Code 332 requires semiannual reports to be filed within 60 days after January 1 and July 1 of each year covering the previous six months.

References: Illinois Program Statement, Section VI, "Implementation

of the Regulatory Program" and 32 Ill. Adm. Code Parts 200, 332, and 340.

*F. Instrumentation*

36. The State should have available both field and laboratory instrumentation sufficient to ensure the licensee's control of materials and to validate the licensee's measurements.

IDNS has available an extensive inventory of field and laboratory instrumentation for radiation detection and measurment. A fully equipped radiochemistry facility has been established for performing radiochemical analysis of radioactive samples. Additionally, the IDNS has a well equipped mobile field laboratory which can be used for routine sample analysis while in a standby mode for emergency response. IDNS has also reported that they have twenty-two portable instrumentation kits available for use. Appendix H to the program statement provides an overview of the laboratory and instrument capabilities and lists the instrumentation available to the State.

IDNS has participated in a cross-comparison study on analysis of radionuclides in drinking water. The study has been completed and IDNS is expecting certification at time of this analysis.

Athough IDNS did not provide any information on Equipment Calibration procedures, the program reviews conducted December 7–19, 1987 and January 29 through February 8, 1990 found that the State had adequate instrumentation for surveying licensee operations and satisfied the requirements for calibrating its radiation detection equipment.

*References:* Illinois Program Statement, Section V, "Instrumentation," and Appendix H.

**III. Staff Conclusion**

Section 274d of the Atomic Energy of 1954, as amended, states:

The Commission shall enter into an agreement under subsection b of this section with any State if—

(1) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) the Commission finds that the State program is in accordance with the requirements of subsection 0, and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

The amendment to the State of Illinois agreement is for source material milling activities including the resulting 11e.(2) byproduct material to which section 274o of the Act applies. Section 274o provides that the State may adopt standards for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose. The staff has identified some sections of the State's regulations that are considered to be more stringent than NRC's regulations. The NRC staff has concluded that the program of the State of Illinois is in accordance with the requirements of section 274o of the Act and meets the NRC criteria for an amended agreement. The State's statutes, regulations, personnel, and licensing, inspection, and administrative procedures are compatible with, or more stringent than, those of the Commission and are adequate to protect the public health and safety with respect to the materials covered by the proposed amendment to the Agreement.

Dated at Rockville, Maryland, this 23d day of March 1990.

For the U.S. Nuclear Regulatory Commission.

**Fred Combs,**

*Acting Director, State Programs, Office of Governmental and Public Affairs.*

**Appendix A—Proposed Amendment Number One to the Agreement Between the United States Nuclear Regulatory Commission and the State of Illinois for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended**

*Whereas,* the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

*Whereas,* the Governor of the State of Illinois is authorized under Illinois Revised Statutes, 1987, ch. 111½, par. 216b and ch. 111½; par., 241–19 to enter into this Agreement with the Commission; and,

*Whereas,* on June 1, 1987, an Agreement between the Commission and the State of Illinois became effective which transferred regulatory authority over byproduct material as defined in section 11.e(1) of the act, source materials, special nuclear materials in quantities not sufficient to form a critical mass, and the land disposal of source, byproduct, and spcial nuclear material received from other persons; and,

*Whereas,* Article III of that Agreement provides that the Agreement may be amended, upon application by the State and approval by the Commission, to include the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material; and,

*Whereas,* Governor of the State of Illinois certified on _____ that the State of Illonois (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and that the State desires to assume regulatory responsibility for such materials; and,

*Whereas,* the Commission found on _____ that the program of the State for the regulation of the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and,

*Whereas,* the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

*Whereas,* the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to Amendment Number One to the Agreement; and,

*Whereas,* Amendment Number One to the Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

*Now, Therefore, it is hereby agreed* between the Commission and the Governor of the State, acting in behalf of the State, as follows:

1) Article I of the Agreement is hereby amended to expand the scope of the Agreement to include the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in Section 11e.(2) of the Act. As amended, Article I now reads as follows:

*Article I*

Subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7,

and 8, and Section 161 of the Act with respect to the following:

A. Byproduct material as defined in Section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and,

D. The land disposal of source, byproduct, and special nuclear material received from other persons.

Pursuant to Article III, and subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Amendment Number One to this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following:

E. The extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in section 11e.(2) of the Act.

2) Article II of the Agreement is hereby amended by inserting "A." before "This Agreement," by redesignating paragraphs A. through D. as subparagraphs 1. through 4., by deleting paragraph E., relating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B., relating to authorities that will be retained by the Commission. As amended, Article II now reads as follows:

Article II

A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

1. The construction and operation of any production or utilization facility;

2. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

3. The disposal into the ocean or sea of byproduct, source, or special nuclear waster materials as defined in regulations or orders of the Commission; and,

4. The disposal of such other byproduct, source, or special nuclear materials as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in section 11e.(2) of the Atomic Energy Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance, and ownership of such byproduct material and of land used as a disposal stie for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the license shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to paragraph 2.b. of this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger the public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. of this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or a State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety, and other actions as the Commission deems necessary; and,

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance of such disposal sites on land held in trust by the United States for any Indian tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States.

3) Article IX of the Agreement is hereby amended by redesignating it Article X and by inserting a new Article IX. As amended, Articles IX and X now read as follows:

*Article IX*

In the licensing and regulation of byproduct material as defined in section 11e.(2) of the Act, or of any activity which results in the production of such material, the State shall comply with the provisions of section 274o of the Act. If, in such licensing and regulation, the State requires financial surety arrangements for the reclamation or long-term surveillance of such material,

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custory of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and,

B. Such State surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term surveillance of such byproduct material and its disposal site.

*Article X*

This Agreement shall become effective on June 1, 1987, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

4) The Agreement effective June 1, 1987 remains in effect except as modified by amendments contained in Paragraphs 1), 2), and 3) of this Amendment Number One.

5) This Amendment Number one to the June 1, 1987 Agreement shall become effective on _____, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland, in triplicate, this ____ day of _____.

For the United States Nuclear Regulatory Commission.

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*Chairman.*

Done at Springfield, Illinois, in triplicate, this ____ day of _____.

For the State of Illinois.

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*Governor.*

[FR Doc. 90–7198 Filed 3–27–90; 8:45 am]

BILLING CODE 7590–01–M

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## Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant

hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 12, 1990 through March 23, 1990. The last biweekly notice was published on March 21, 1990 (55 FR 2430).

## 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, 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 is discussed below.

By May 4, 1990 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. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved. 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. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. 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 Services 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.

**Alabama Power Company, Docket No. 50-364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama**

*Date of amendment request:* February 8, 1990

*Description of amendment request:* The proposed changes would modify the visual inspecting requirements for Technical Specifications (TS) 4.7.9, Snubbers, and add a new Table 4.7-3, Snubber Visual Inspection Schedule, on a one-time basis to preclude an unnecessary plant shutdown prior to the next scheduled refueling outage. The changes are based on the application of statistical methodology to determine visual inspection intervals which would meet the same acceptance confidence level as the current requirements. In addition, a similar amendment was granted on March 30, 1987 on a one-time basis pending completion of generic studies by the Commission. Those generic studies are underway, but have not yet been completed.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Alabama Power Company (the licensee) has reviewed the proposed changes and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

(1) The proposed change will not significantly increase the probability or consequence of an accident previously evaluated because the existing snubber operability requirements will remain intact and the proposed visual inspection requirements will effectively verify snubber system reliability. In addition, a plant shutdown (transient) will not be required to inspect inaccessible snubbers.

(2) The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated because the change will not alter plant configuration or change parameters governing normal plant operation.

(3) The proposed change will not involve a significant reduction to the margin of safety because the combination of visual inspection intervals which maintain a 95% confidence that at least 90% of all safety-related snubbers are operable at all time along with the required functional testing of safety-related snubbers will provide adequate assurance that the snubber system will adequately perform its intended function.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama 36302

*Attorney for licensee:* Ernest L. Blake, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* Elinor G. Adensam

**Arizona Public Service Company, et al., Docket Nos. STN 50-528 and STN 50-529, Palo Verde Nuclear Generating Station (PVNGS), Units 1 and 2, Maricopa County, Arizona**

*Date of amendment request:* June 20, 1989

*Description of amendment request:* The proposed amendment consists of a number of proposed format and editorial changes to the Technical Specifications (Appendix A to Facility Operating License Nos. NPF-41 and NPF-51) to clarify operation when 1 or 2 Control Element Assembly Calculators (CEACs) are inoperable. The specific proposed changes are discussed below:

(1) Specification 3.1.3.1, Action c.2.a, is modified to eliminate specific reference to the figures which specify the full and part length Control Element Assembly (CEA) insertion limits, since the figures are contained within the Technical Specifications already referenced in this Action Statement.

(2) Specification 3.1.3.2, Action c, is modified to include reference to Specification 3.1.3.5 for shutdown CEA insertion limits for the purpose of clarification and completeness.

(3) Specification 3.1.3.5, Action b, is modified to change the word "apply" to "comply with," for the purpose of clarification.

(4) Specification 4.1.3.5.b, is modified to include the specific requirement when both CEACs are inoperable. This is consistent with the current format of Specification 4.1.3.1.1 and 4.1.3.6 for CEA and Regulating Group position and with the proposed format of Specification 4.1.3.7 for Part Length Group Position. Also, the specific time interval requirement must be included in this Surveillance Requirement since it is proposed that it is removed from Table 3.3-1, Action 6b.3.

(5) Specification 3.1.3.6, is reformatted to clarify and specify the operation and actions required for 1 or 2 CEACs inoperable, operating between the Long Term Steady State Insertion Limits (LTSSIL) and the Transient Insertion Limits (TIL), and operating between the Short Term Steady State Insertion Limits (STSSIL) and the Transient Insertion Limits (TIL).

(6) Specification 3.1.3.6 a.2, is added to specify information previously contained only in the action statement, and clarifies restrictions on operation between the STSSIL and the TIL.

(7) Specification 3.1.3.6 b, is added to clarify the specific insertion limits of CEA Group 5 for the condition of both CEACs inoperable (with or without COLSS in service), since it is appropriate that this insertion limit be specified within this specification.

(8) Specification 3.1.3.6, the last sentence was added referring to Regulating CEAs excluded by the insertion limits. This sentence clarifies information previously specified in a footnote. This footnote was deleted on page 3/4 1-29.

(9) Specification 3.1.3.6, Action a, is modified to clarify operation for the condition of 1 or both CEACs inoperable and add direction to be in Hot Standby if the CEA groups cannot be maintained within the limits.

(10) Specification 3.1.3.6, Action c, is a rewrite of what was previously Action b. This change was made for clarification purposes and to explicitly correspond with Specification 3.1.3.6 a.2, and to clearly state the action required for insertion between the STSSIL and the TIL.

(11) Specification 4.1.3.6, is modified to clarify that the requirement is applicable when both CEACs are inoperable. Additionally, "individual CEA" is changed to read more appropriately "CEA group," because this LCO/SR applies to "group" insertion. Surveillance Requirement 4.1.3.1.1 correctly addresses individual CEA position surveillance requirements.

(12) Specification 3.1.3.7, is reformatted to clarify and specify the operation and actions required for 1 or both CEACs inoperable. The reformatting is necessary to improve readability and will decrease the potential for human error. Additions to Actions a.2a.2 and a.2b provide direction to be in Hot Standby if the CEA groups cannot be maintained within the limits.

(13) Specification 4.1.3.7, has minor editorial changes and is modified to include the requirement when both CEACs are inoperable. This is consistent with the current format of Surveillance Requirement 4.1.3.1.1 for CEA position and 4.1.3.6 for Regulating CEA Insertion. Also, the specific time interval requirements must be included in this Surveillance Requirement since it is proposed that it is removed from Table 3.3-1, Action 6b.3.

(14) Specification 3.3.1 Table 3.3-1, Action 6a, is modified to eliminate the details of the Surveillance Requirement from the Action Statement and instead, reference the appropriate Surveillance Requirement 4.1.3.1.1.

(15) Specification 3.3.1 Table 3.3-1, Action 6b.2.a, is modified to reference pertinent Technical Specifications and reference the specification from which the Group 5 limits came.

(16) Specification 3.3-1 Table 3.3-1, Action 6b.2.c, is modified to reference appropriate pertinent Technical Specifications for CEA motion/position.

(17) Specification 3.3.1 Table 3.3-1, Action 6b.3, is modified by removing the details of the specific requirements for individual CEA and group position surveillances, and instead, references the appropriate Surveillance Requirements.

(18) Specification 3.10.4, 4.10.4.1 and 4.10.4.2 are modified to add reference to the Shutdown CEAs for completeness.

*Basis for Proposed No Significant Hazards Consideration Determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against these standards and has provided the following discussion:

*Standard 1* - Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification amendment will not increase the probability of occurrence of the consequences of an accident or malfunction of equipment important to safety previously evaluated in the FSAR. The proposed modifications do not change or replace equipment or components important to safety. These changes add additional assurance that plant operations will be performed in a safe manner. Therefore, there is no increase in the probability of occurrence or the consequences of an accident occurring.

*Standard 2* - Create the possibility of a new or different kind of accident previously evaluated.

The proposed Technical Specification amendment will not create the possibility for an accident or malfunction of a different type than any previously evaluated for the FSAR. The proposed changes will increase the operator's ability to ensure proper operation when 1 or 2 CEACs are inoperable. Therefore, the possibility for an accident or malfunction of a different type than previously evaluated will not be created by these modifications.

*Standard 3* - Involve a significant reduction in a margin of safety.

The proposed Technical Specification amendment will not reduce the margin of safety as defined in the basis for the Technical Specifications. The proposed changes will reduce the possibility of human error, thus providing additional assurance of proper operation when 1 or 2 CEACs are inoperable. Therefore, the defined margin of safety will not be reduced by these changes to the Technical Specifications.

The staff has reviewed the licensees' no significant hazards analysis and concurs with their conclusions. As such, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

*Attorney for licensees:* Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

*NRC Project Director:* Charles M. Trammell, Acting

**Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station (PVNGS), Unit 1, 2 and 3, Maricopa County, Arizona**

*Date of amendment request:* March 8, 1990

*Description of amendment request:* The proposed amendment would remove the 3.25 limit on the combined time interval for three consecutive surveillance intervals in Technical Specification 4.0.2. The limit of 25 percent extension for individual surveillance intervals would be retained.

*Basis for Proposed No Significant Hazards Consideration Determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a signficant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against these standards and has provided the following discussion:

*Standard 1:* Involve a significant increase in the probability or consequences of an accident previously evaluated.

Industry experience has demonstrated that the ability to extend surveillance intervals by 25 percent has a positive safety impact since it accommodates variations in fuel cycle length due to unplanned outages and eliminates forced shutdowns solely to perform refueling interval surveillances. The 25 percent surveillance interval extension also allows extension of a surveillance interval for a surveillance which is performed on a routine basis during power operation when plant conditions are unsuitable to its performance, such as during plant transients or when safety systems are out of service because of ongoing maintenance or surveillance activities. The additional restriction of not exceeding 3.25 times the surveillance interval for the performance of 3 consecutive surveillances does not improved the safety of operation since this limitation could result in a forced shutdown solely to perform refueling interval surveillances with little or no safety benefit and result in surveillances being performed when plant conditions are unsuitable for their performance. Removal of the 3.25 limit surveillance interval improves safety by allowing flexibility in the scheduling of surveillances to ensure they are performed when plant conditions are suitable and allow for variations in fuel cycle length without a forced shutdown solely for the performance of surveillances (which in the vast majority of cases prove operability). Thus the proposed amendment does not result in an increase in the probability or consequences of an accident previously evaluated.

*Standard 2:* Create the possibility of a new or different kind of accident from any accident previously evaluated.

Removal of the 3.25 limitation on extending surveillance intervals reduces the possibility of a surveillance interval forcing a shutdown, or forcing the performance of a surveillance during unsuitable plant conditions. This produces a positive impact on the safety of operation as recognized in Generic Letter 89-14. The proposed change does not affect plant equipment configuration or operation and is administrative in nature. Therefore, it does not create the possibility of a new or different kind of accident from any previously evaluated.

*Standard 3:* Involve a significant reduction in a margin of safety.

The removal of the 3.25 limitation on extending surveillance requirements will result in a benefit to safety when plant conditions are not conducive to the safe conduct of surveillance requirements. This will provide greater flexibility in the use of the provision for extending surveillance intervals, reduce the administrative burden associated with its use, and have a positive affect on safety.

The staff has reviewed the licensees' no significant hazards analysis and concurs with their conclusions. As such, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004

*Attorney for licensees:* Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

*NRC Project Director:* Charles M. Trammell, Acting

**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:* October 11, 1989

*Description of amendments request:* Commonwealth Edison Company (CECo) submitted an application to amend Appendix A, Technical Specifications (TS), of Operating Licenses DPR-29 and DPR-30 for the Quad Cities Nuclear Power Station (QCNPS), Units 1 and 2. This application would change the Technical Specifications requirements for jet flow indication.

*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.

CECo has evaluated this proposed amendment and determined that the change does not involve a significant hazards consideration. In accordance with 10 CFR 50.92(c):

1. The proposed change does not involve a significant increase in the probability or consequence or an accident previously evaluated.

A loss of coolant accident is the only evaluated accident which entails a broken instrument line. With respect to the loss of coolant accident, two concerns have been identified.

First, the jet pump integrity must be maintained to ensure that the core can be reflooded following a design basis LOCA. The GE safety evaluation has demonstrated that the failure of the jet pump flow indication does not prevent adequate monitoring of jet pump integrity provided that both jet pumps on the same riser do not have failed flow indication. The safety evaluation concluded that for the failure of any jet pump, except one having failed flow indication, the current Technical Specification surveillance requirements were adequate for detection of the failure. In the event of a jet pump failure on a jet pump with inoperable flow indication, the resultant change in indicated core flow would be significant, but it may not be sufficient to cause the core plate dp-core flow comparison to be out of limits. If this type of failure occurred while utilizing the proposed surveillance requirements, the resultant change in the flow through the companion jet pump on the riser would be sufficient to ensure the detection of the failure. Since the core plate dp-core flow comparison surveillance would be adequate for detection of the failure of at least 19 of the 20 jet pumps (those with operable flow indications), the surveillance is being retained as a Technical Specification requirement. The individual jet pump flow to average loop jet pump flow comparison is being added to ensure that two surveillance methods are available and effective to detect the failure of a jet pump regardless of the condition of the flow indication. The proposed Technical Specification surveillance methods will, therefore, ensure that jet pump integrity monitoring capability will be maintained.

Second, the failure of the instrument line provides an additional leakage path from the jet pump to the annulus region. The instrument line is a 0.25 inch line and would allow insignificant leakage during the design basis LOCA compared to the capacity of the available core cooling system. The leakage from the instrument line is also insignificant with respect to the design leakage assumed for the jet pumps during the normal operation and during LPCI operation. LOCA sensitivity studies have indicated that an increase in leakage, on the order of that associated with the failed jet pump instrument line, has no effect on the LOCA safety limits or their calculations.

The proposed change, therefore does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

The purpose for the jet pump flow instruments is to provide a means to monitor jet pump integrity as well as measuring core flow.

Jet pump integrity must be maintained to ensure that the core can be reflooded following a design basis LOCA. The GE safety evaluation has demonstrated that the failure of the jet pump flow indication does not prevent adequate monitoring of the jet pump integrity provided that both jet pumps on the same riser do not have failed flow indication. The safety evaluation concluded that the current Technical Specification surveillance is adequate provided that the flow instrument on the failed jet pump is operable. The amendment request, therefore, proposes an additional surveillance requirement. The proposed surveillance requirement would detect a failure of a jet pump irrespective of the condition of the flow instruments provided that both jet pumps on the same riser do not have failed flow instruments. The proposed amendment restricts operation under these conditions. The current Technical Specification,

augmented by the proposed Technical Specification surveillance, will ensure jet pump integrity is properly monitored.

The ability to accurately measure total core flow will be maintained to ensure that accurate calculations of the reactor power distribution and Minimal Critical Power Ratio (MCPR) are provided. The GE safety evaluation demonstrates that core flow measurement uncertainty is maintained within the limits assumed in the General Electric Thermal Analysis Basis (GETAB) provided that both jet pumps on the same riser do not have failed flow indication and both calibrated jet pumps on the same recirculation loop have operable flow indication. The proposed amendment restricts operation under these conditions. The derivation of the MCPR safety limits for both single and dual loop operation is achieved through the use of GETAB.

In addition, the proposed Technical Specification does not introduce any new or different modes of operation, thereby, no new accident scenarios are created as a result of any new modes of operation.

3. The proposed change does not involve a significant reduction in the margin of safety.

The ability to accurately measure total core flow will be maintained to ensure that accurate calculation of the reactor power distribution and MCPR is achieved, thereby, no significant reduction in the margin of safety is involved. The GE safety evaluation demonstrates that core flow measurement uncertainty is maintained with the limits assumed in the General Electric Thermal Analysis Basis (GETAB) provided that both jet pumps on the same riser do not have failed flow indication and both calibrated jet pumps on the same recirculation have operable flow indication. The proposed amendment restricts operation under these conditions. The derivation of the MCPR safety limits for both single and dual loop operation is achieved through the use of GETAB.

In addition, the LOCA analysis assumptions for intact jet pumps will be met through the proposed surveillance requirement. The surveillances provide methods to assure jet pump integrity is maintained.

The proposed Technical Specification, therefore, does 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 and the licensee's evaluation of no significant hazards consideration.

*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 60690.

*NRC Project Director:* John W. Craig

**Florida Power Corporation, et al., Docket No. 50-302, Crystal River, Unit No. 3, Nuclear Generating Plant, Citrus County, Florida**

*Date of amendment request:* February 13, 1990

*Description of amendment request:* The proposed amendment would add notes to the Technical Specifications (TS) which would allow elimination of automatic, simultaneous operation of the motor-driven emergency feedwater pump and the low pressure injection (LPI) pump when offsite power is not available. The amendment would also make corrections to the required response times for the LPI and high pressure injection (HPI) systems.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed changes against the above standards as required by 10 CFR 50.92, and concluded that:

The proposed change in the low pressure injection/emergency feedwater initiation logic and the high and low pressure injection response times does not involve a significant hazard consideration. The revised specification will continue to ensure these systems function as assumed in the safety analysis and as such, represents a continuance of the present level of safety.

Based on the above, FPC concludes this change will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated because the reliability of the systems is essentially unaffected by the change. The consequences of the accidents remain bounded by the safety analysis.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change[s] [assure] the systems involved will continue to function as assumed in the safety analysis.

3. Involve a significant reduction in the margin of safety because the systems involved will continue to be fully capable of mitigating design basis transients and accidents.

The NRC staff has reviewed the licensee's evaluation and concurs with it. In addition, the staff had previously agreed conceptually to the control logic change which the proposed changes would permit. Therefore, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

*Attorney for licensee:* A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P.O. Box 14042, St. Petersburg, Florida 33733

**Florida Power and Light Company, et al., Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida**

*Date of amendment request:* March 9, 1990

*Description of amendment request:* The proposed amendment would provide greater operational flexibility at lower power by expanding the Axial Shape Index (ASI) limits for the Departure from Nucleate Boiling (DNB) and Local Power Density (LPD) Limiting Conditions for Operation (LCOs) and the LPD Limiting Safety System Setpoints (LSSS). The proposed changes modify the LPD LSSS (Technical Specification Figure 2.2-2), the LPD LCO (Technical Specification Figure 3.2-2), and the DNB LCO (Technical Specification Figure 3.2-4).

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria.

*Criterion 1*

The Axial Shape Index (ASI) limits are used as initial assumptions for Design Basis Events (DBEs) evaluated in the safety analysis. The expansion of these ASI limits are applicable only to those DBEs that are evaluated between hot full and hot zero power. Events are not typically analyzed at intermediate power levels. Events initiated from intermediate power levels ([less than 100% but more than 0%]) are unaffected since these are bounded by the results of events

initiated from either the full power or zero power events.

The existing safety analyses for these events use input parameters that are axial shape dependent, which are more adverse (conservative) than the Technical Specification Limiting Condition for Operation (LCO) and Limiting Safety System Setpoint (LSSS) axial shape limits at all power levels in order to bound future cycles' operation. It was verified, using current methodology and the proposed ASI limits, that the current safety analysis remains valid.

The current ASI limits allowed by the Departure from Nucleate Boiling (DNB) and Local Power Density (LPD) LCOs and Limiting Safety System Setpoints (LSSSs) are expanded for greater operational flexibility. [These] proposed change[s] will not increase the probability or consequences of an accident previously evaluated because the proposed limits are bounded by the actual calculated limiting values.

*Criterion 2*

The proposed changes in the Technical Specifications do not affect any active hardware involving plant operation, nor do they alter the assumptions or methodology of the safety analyses. Therefore, they will not create the possibility of a new or different kind of accident from any previously evaluated.

*Criterion 3*

The wider ASI bands have been reviewed for their impact upon the current licensed safety analysis. The licensed safety analysis of record remains unchanged due to the expanded ASI limits. Therefore, there is no significant reduction in a margin of safety.

Based upon the above, we have determined that the proposed amendment does 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; and therefore does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the staff proposes to determine that the proposed changes to the TS involve no significant hazards considerations.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

*Attorney for licensee:* Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* Herbert N. Berkow

**Florida Power and Light Company, et al., Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida**

*Date of amendment request:* March 9, 1990

*Description of amendment request:* The proposed amendment would revise Technical Specifications 2.2.1, Reactor Trip Setpoints, and 3/4.3.2, Engineered Safety Feature Actuation System Instrumentation. One proposed change would lower the Reactor Protective System steam generator level-low trip setpoint from greater than or equal to 37.0% narrow range to greater than or equal to 20.5% narrow range. The Auxiliary Feedwater Actuation System setpoint for the steam generator level-low trip would be lowered from its current value of greater than or equal to 29.0% narrow range to greater than or equal to 19.0% narrow range. A change is also being proposed to reduce the Auxiliary Feedwater System response time on low steam generator level. Finally, the licensee would revise the allowable values for steam generator and feedwater header high differential pressure for auxiliary feedwater initiation.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria.

*Criterion 1*

The proposed change to lower the [s]team [g]enerator (S/G) [l]evel-[l]ow trip Reactor Protective System (RPS) and Auxiliary Feedwater Actuation System (AFAS) setpoints can potentially reduce the likelihood of an unplanned reactor trip or AFAS initiation by allowing larger fluctuations in the S/G water level. Additionally, the proposed change to the AFWS response time reduces the maximum response time and thus reduces challenges to steam generator (S/G) integrity under the condition of a plant trip. The only event relying on the reactor trip on low S/G level and the [Auxiliary Feedwater System (AFWS)] response time for mitigation is the [l]oss of [n]ormal [f]eedwater [f]low from the standpoint of minimum S/G inventory requirements; Section 15.2.8 in the Final Safety Analysis Report (FSAR). The results show that the operators have 11.7 minutes to verify auto start or, if necessary, to manually initiate auxiliary feedwater flow before S/G dryout occurs. Therefore, the proposed RPS S/G [l]evel-[l]ow setpoint ensures that sufficient water inventory exists in the S/G's at the time of the trip to provide a margin of more than 10 minutes before AFW is required as stated in the Bases of the Technical Specifications. The AFWS response time of 305 seconds is well within the time-frame demonstrated as acceptable in the Bases of the Technical Specifications.

The proposed S/G [l]evel-[l]ow RPS trip and AFAS setpoints have been established such that they ensure actuation of those functions and include conservative allowances for instrumentation uncertainties. The reanalysis of the [l]oss of [n]ormal [f]eedwater [f]low event is performed accounting for the most adverse combination of uncertainties of the proposed setpoints ensuring that the required instrumentation remains on scale for system actuation.

The proposed changes to the auxiliary feedwater isolation trip setpoint and the allowable values for S/G and feedwater header high differential pressure provide additional assurances that the AFAS [a]uxiliary [f]eedwater [i]solation logic would properly identify a faulted steam generator under certain accident scenarios. The proposed change is a conservative change to the Technical Specifications in that it provides a tighter band for the [a]uxiliary [f]eedwater [i]solation allowable trip values. The proposed change does not impact accidents previously evaluated for St. Lucie Unit 1.

The Auxiliary Feedwater System was evaluated against the Standard Review Plan, Section 10.4.9 and Branch Technical Position 10-1 guidelines. From this evaluation, it was concluded that the Auxiliary Feedwater System continues to meet the acceptance criteria of the Standard Review Plan and Branch Technical Position.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

*Criterion 2*

No new accident indicators are created by the changes needed to support reduction of the S/G [l]evel-[l]ow setpoints for actuation of a reactor trip and initiation of the AFAS, as well as the changes needed to support a reduction of the AFWS response time. Additionally, no new accident initiators are created by the changes needed to support a revision to the [a]uxiliary [f]eedwater [i]solation trip setpoint and allowable values for steam generator and feedwater header high differential pressure.

The events reanalyzed provide assurance that operation of AFAS with reduced RPS trip and AFAS setpoints, as well as a different AFWS response time, produces acceptable results.

Finally, the changes do not result in any physical change to the plant or method of operating the plant from that allowed by the Technical Specifications.

Therefore, the proposed Technical Specification changes do not create the possibility of a new or different kind of accident.

*Criterion 3*

The reduced S/G [l]evel-[l]ow RPS and AFAS trip setpoints and the AFWS response time change have been evaluated for their

impact on the current safety analysis. The results of the new analyses for these transients impacted by the proposed changes remain within the appropriate acceptance criteria. The changes made to the isolation trip setpoint and the differential pressure values do not have any effect on the results of any previously analyzed events. Therefore, the existing margin of safety is preserved.

Based on the above, we have determined that the proposed amendment does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the staff proposes to determine that the proposed changes to the TS involve no significant hazards considerations.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

*Attorney for licensee:* Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* Herbert N. Berkow

**Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida**

*Date of amendment requests:* February 12, 1990

*Description of amendment requests:* The proposed amendments to the St. Lucie Units 1 and 2 Technical Specifications would revise the requirement to determine control element assembly (CEA) operability at least once per 31 days to once per 92 days. Additionally, it is proposed that the surveillance interval for the performance of the functional test of the CEA block circuit, which is performed as part of the CEA operability test, be performed on a quarterly basis, rather than on the current monthly basis.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria.

*Criterion 1*

Operation of the facility in accordance with the proposed amendment[s] would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The intent of the [c]ontrol [e]lement [a]ssembly (CEA) movement testing surveillance is the detection of CEAs which are stuck fully out of the core, and to demonstrate that the CEA can move freely within a small range of movement. The current Combustion Engineering Standard Technical Specification and the St. Lucie Technical Specification 31 day surveillance interval frequency was based on engineering judgement. Operating experience has demonstrated that this surveillance is not a principal method for detecting stuck CEAs. For example, startup testing, which includes CEA drop testing and CEA worth testing, [has] detected a number of stuck CEAs. Additionally, in a few instances, stuck CEAs have been identified following a trip, and have generally occurred in the last foot of travel. The St. Lucie Units 1 and 2 Updated Final Safety Analysis Report (UFSAR) Chapter 15 Accident Analyses assume the most reactive CEA is stuck in the fully withdrawn position on a reactor trip; therefore, [these] amendment[s] [do] not involve a significant increase in the consequences of accidents previously analyzed. As discussed above, other more effective means of detecting stuck CEAs in normal use make operation with an undetected stuck CEA improbable. Therefore, [these] amendment[s] [do] not involve a significant increase in the probability of accidents previously analyzed.

Increasing the surveillance test interval of the CEA movement test will decrease the probability of dropping a CEA. Dropped CEAs cause unnecessary flux perturbations in the core, and can result in a reactor trip.

The block circuit test frequency was originally established to be the same as the CEA movement test. The individual CEA block circuit surveillance is not directly connected with any analyzed event, but rather serves as backup to other surveillances and operator action. The CEA group block circuit surveillance applies during initial CEA withdrawal during reactor startup, and is bounded by the CEA [m]isoperation event previously analyzed.

*Criterion 2*

Operation of the facility in accordance with the proposed amendment[s] [would] not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident initiators are created by the extended test intervals. A single CEA stuck in the fully withdrawn position and CEA misoperation events have been previously analyzed in the St. Lucie Units 1 and 2 UFSAR Chapter 15 Accident Analyses. Additionally, the change does not result in any physical change to the plant or method of operating the plant from that allowed by the [T]echnical [S]pecifications.

*Criterion 3*

Operation of the facility in accordance with the proposed amendment[s] [would] not involve a significant reduction in a margin of safety.

The St. Lucie Units 1 and 2 UFSAR Chapter 15 accident analyses assume the most reactive control element assembly is stuck in the fully withdrawn position on a reactor trip; therefore, this proposed change does not alter the margin of safety with respect to limiting positive reactivity additions during a postulated [m]ain [s]team [l]ine [b]reak at [h]ot [z]ero [p]ower [e]nd of [c]ycle. Additionally, [s]hutdown [m]argin requirements per the St. Lucie Units 1 and 2 Technical Specifications assume the hypothetical worst case stuck CEA.

The Technical Specification Action Statements applicable to misaligned or inoperable CEAs include requirements to align the [o]perable CEAs in a given group with an inoperable CEA. Conformance with these alignment requirements brings the core, within a short period of time, to a configuration consistent with that assumed in establishing Limiting Conditions for Operation (LCO) limits and Limiting Safety System Settings (LSSS) setpoints.

Even should a CEA misalignment or CEA block circuit failure occur during the proposed 92 day surveillance frequency for testing, other independent means of detecting misaligned CEAs exist, enabling control room operators to implement the Technical Specification ACTIONS as required.

Based on the above, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the 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, and therefore does not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the staff proposes to determine that the proposed changes to the TS involve no significant hazards consideration.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

*Attorney for licensee:* Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* Herbert N. Berkow

**Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499 South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of amendment request:* December 18, 1989

*Description of amendment request:* The proposed change is to revise the description of the Plant Operations Committee (PORC) and Nuclear Safety Review Board (NSRB) compositions included in the plant's technical specifications 6.5.1.1 and 6.5.2.2. Currently the composition of both groups is defined by organizational titles. In the proposed change the PORC composition would be defined by specific technical disciplines. The NSRB would be comprised of a full time chairman and individuals who have attained the position of area manager.

*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; 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 an analysis that addressed the above three standards in the amendment application.

The proposed changes will change neither the technical disciplines required nor the level of expertise represented on the committees. The function of the PORC will remain unchanged. With respect to the NSRB, the members will continue to be qualified in accordance with ANSI 3.1-1981 and Regulatory Guide 1.8. Consequently, the changes are considered administrative.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposed to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Rooms Location:* Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701

*Attorney for licensee:* Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* Frederick J. Hebdon

**Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan**

*Date of amendments request: October 25, 1989*

*Description of amendments request:* The proposed amendment would change Technical Specification (TS) 3/4.4.9, "Pressure/Temperature Limits," to limit the maximum heatup rate to 60° F/hr and to provide revised heatup and cooldown pressure-temperature (P-T) limit curves. The maximum heatup rate is currently limited to 100° F/hr. The proposed revisions are based on a reanalysis of reactor vessel sample material in accordance with Regulatory Guide (RG) 1.99, Rev 2.

*Basis for proposed no significant hazards consideration determination:* 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

*Criterion 1*

The changes to the P-T curves are in the conservative direction. The new curves were generated based on the latest NRC guidance, Rev. 2 to R/G 1.99. Therefore, we conclude that the changes will not involve a significant increase in the probability or consequences of a previously evaluated accident, nor will the changes involve a significant reduction in a margin of safety.

*Criterion 2*

The changes do not involve any physical modifications to the plant. The changes will involve changes to plant operations; however, these changes are in the conservative direction, placing more stringent requirements on heatup/cooldown operations. Therefore, the changes should not create the possibility of a new or different kind of accident from any previously analyzed or evaluated.

*Criterion 3*

The changes to the P-T curves are in the conservative direction. The new curves were generated based on the latest NRC guidance, Rev. 2 to R/G 1.99. Therefore, we conclude that the changes will not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John O. Thoma, Acting.

**Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan**

*Date of amendment request:* March 14, 1989

*Description of amendment request:* The proposed amendment would clarify and correct Technical Specification (TS) 3/4.3.2.1, "Engineered Safety Feature Actuation System Instrumentation." The changes are briefly described below.

Change 1: TS Tables 3.3-3, 3.3-4, and 4.3-2 would be modified to more accurately reflect the design of the ESF manual actuation channels as delineated in TS Table 3.3-5 and to more closely resemble the surveillance requirements of the Standard TS (STS).

Change 2: TS Table 3.3-3 would be further modified to correct inconsistencies between the number of channels which exist and the number of channels required to trip.

Change 3: Surveillance requirements for manual actuation circuitry as specified in TS Table 4.3-2 would be changed from a Monthly Channel Functional Test to an 18 month Trip Actuating Device Operational Test consistent with Revision 4 of the STS. Testing of the manual actuation circuitry is encompassed by the automatic actuation logic testing of the solid state protection system (SSPS) which is performed every 31 days on a staggered train basis. A channel functional test of the manual actuation circuitry for main steam isolation will continue to be conducted on a monthly basis, since the manual switches for this function do not input directly into their associated train's SSPS.

Change 4: The action statement associated with testing the manual actuation circuitry for the steam line isolation function specified in TS Table 3.3-3 would also be changed to be more

consistent with the STS. The current action statement requires the unit to be placed in Mode 3 within 54 hours if the number of operable channels is one less than the total. The proposed change (and the STS) require that the steam line stop valve associated with the inoperable manual channel be declared inoperable if the cause of the channel inoperability is not corrected within 48 hours.

Change 5: An editorial error in TS Table 3.3-5 would be corrected. Manual start of the containment air recirculation fans would be grouped with the switches of functional group 1.b (containment spray and related functions) instead of functional group 1.a (safety injection and related functions).

*Basis for proposed no significant hazards consideration determination:* 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

*Criterion 1*

Change Nos. 1, 2 and 5 are administrative in nature. They involve rewriting the T/Ss regarding ESF manual actuations so that the functions are more accurately portrayed in the document, or so that the document is internally consistent. Change No. 3, involving the ESF manual circuitry testing will reduce the frequency of the portion involving the SSPS from once every month to once every other month. This change corrects an inconsistency in our T/Ss between the requirements for the manual circuitry and the SSPS requirements which was recognized and corrected in later versions of the STS. Our review of the surveillance test history of the monthly SSPS tests has shown that the system is highly reliable, and gives us confidence that the change in test frequency will not endanger public health and safety.

Change No. 4, to the manual steam line isolation circuitry, provides internal consistency in our T/Ss by making the action requirements for the manual actuation circuitry consistent with the associated stop valves. The change is consistent with the STS. For these reasons, it is our belief that the proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

*Criterion 2*

The changes will not introduce any new modes of plant operation, nor will any physical changes to the plant be required. Thus, the changes should not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

*Criterion 3*

Change Nos. 1, 2 and 5 are administrative in nature. They involve rewriting the T/Ss regarding ESF manual actuations so that the functions are more accurately portrayed in the document, or so that the document is internally consistent. Change No. 3, involving the ESF manual circuitry testing will reduce the frequency of the portion involving the SSPS from once every month to once every other month. This change corrects an inconsistency in our T/Ss between the requirements for the manual circuitry and the SSPS requirements which was recognized and corrected in later versions of the STS. Our review of the surveillance test history of the monthly SSPS tests has shown that the system is highly reliable, and gives us confidence that the change in test frequency will not endanger public health and safety. Change No. 4, to the manual steam line isolation circuitry, provides internal consistency in our T/Ss by making the action requirements for the manual actuation circuitry consistent with the associated stop valves. The change is consistent with the STS. For these reasons, it is our belief that the proposed changes do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John O. Thoma, Acting.

**Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan**

*Date of amendments request:* March 29, 1989

*Description of amendment request:* The proposed amendment would change Technical Specification (TS) Table 3.3-2, "Reactor Trip System Instrumentation Response Times," to require time response testing of the lower power range neutron flux (PRNF) reactor trip. Presently, no requirement exists for the response time testing of this trip function.

*Basis for proposed no significant hazards consideration determination:* 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

*Criterion 1*

This change is intended to clarify the existing T/S requirements for the PRNF reactor trip. No operability or surveillance requirements have been reduced. We therefore believe the change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

*Criterion 2*

The change does not involve physical modifications to the plant or changes in plant operation. The change therefore should not create the possibility of a new or different kind of accident from any previously analyzed or evaluated.

*Criterion 3*

This change is intended to clarify the existing T/S requirements for the PRNF reactor trip. No operability or surveillance requirements have been reduced. We therefore believe the change does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John O. Thoma, Acting.

**Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan**

*Date of amendment request:* September 22, 1989

*Description of amendments request:* The proposed amendment would change Technical Specification (TS) Table 4.3-1, "Reactor Trip System Instrumentation Surveillance Requirements" to provide an exemption from TS 4.0.4 so that hot-leg to cold-leg differential temperature (delta T) measurements may be made at full power. TS currently requires channel operability prior to entry into Mode 2 (Startup). However, the delta T

measurements must be performed at full power since the overtemperature and overpower delta T functions are defined as a function of delta T at rated thermal power. The amendment also makes an editorial change to Note 9 of TS table 4.3-1 for readability.

*Basis for proposed no significant hazards consideration determination:* 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

*Criterion 1*

The change is necessary to allow for proper calibration of the overtemperature and overpower delta T functions without violation of T/S requirements. The change therefore corrects an inconsistency in our present T/S, and makes the T/S more accurately reflect the system design. Since the change will allow us to measure delta T each cycle, rather than assuming a nominal value, the change should provide an enhancement to our calibration procedure. We therefore do not expect the change to involve a significant increase in the probability or consequences of a previously evaluated accident.

*Criterion 2*

The change involves no physical modifications to the plant nor any significant changes in plant operations. Therefore, the change should not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

*Criterion 3*

The change is necessary to allow for proper calibration of the overtemperature and overpower delta T functions without violation of T/S requirements. The change therefore corrects an inconsistency in our present T/S, and makes the T/S more accurately reflect the system design. Since the change will allow us to measure delta T each cycle, rather than assuming a nominal value, the change should provide an enhancement to our calibration procedure. We therefore do not expect the change to significantly reduce the margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John O. Thoma, Acting.

**Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan**

*Date of amendments request:* December 5, 1989

*Description of amendments request:* The proposed amendment would change Technical Specification (TS) definition 1.4, "Operational Mode" to distinguish whether the reactor is fueled in Mode 6 (Refueling) or defueled (no mode associated). The present definition of Mode 6 makes no distinction based on whether fuel is loaded into the reactor vessel. A number of other TS changes are proposed which would clarify the requirements for equipment operability based on whether the reactor contained fuel.

*Basis for proposed no significant hazards consideration determination:* 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

*Criterion 1*

The proposed changes do not increase the probability or consequences of a previously evaluated accident. Their intent is to provide clarification and remove ambiguities, and reflect NRC and industry interpretations and norms. They do not affect the accident analysis. Consequently, we believe that these changes do not increase the probability or consequences of a previously analyzed accident.

*Criterion 2*

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. They do not require physical alteration of the plant or changes in parameters governing normal plant operation. We therefore believe these changes do not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

*Criterion 3*

The proposed changes are consistent with NRC and industry interpretations and norms. We therefore believe the proposed changes do not significantly reduce a margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John O. Thoma, Acting.

**Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan**

*Date of amendments request: December 27, 1989*

*Description of amendments request:* The proposed amendment would extend the operating licenses of both units to 40 years from the date of issuance of full power licenses. Both licenses currently have expiration dates of March 25, 2009. The proposed change would extend the licenses to October 25, 2014 and December 23, 2017 for Units 1 and 2 respectively.

*Basis for proposed no significant hazards consideration determination:* 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

*Criterion 1*

The probability or consequences of an accident are determined by the design and operation of plant systems. Existing programs are unaffected by this change and will remain in effect throughout the duration of the operating license, whatever duration it is. Thus, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

*Criterion 2*

The possibility of a new or different kind of accident is not created by this proposed change since it does not involve hardware or procedural modifications. Surveillance and maintenance practices, which are implemented in accordance with the ASME code and the facility Technical Specifications, provide assurance that any unexpected degradation in plant equipment

will be identified and corrected. Thus, any degradation that might create a different kind of accident would be detected and corrected by existing programs and routine maintenance.

*Criterion 3*

This proposed change does not involve a significant reduction in a margin of safety. The Cook Nuclear Plant Units 1 and 2 were designed and constructed for a 40-year operating life. In addition, existing programs, routine maintenance, and existing Technical Specifications provide assurance that an adequate margin of safety is maintained. These activities will remain in effect through the duration of the operating license. Thus, the extension of the duration of the operating license does not result in a reduction in any margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John O. Thoma, Acting.

**Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* February 12, 1990

*Description of amendment request:* The proposed amendment would revise the Technical Specifications to establish a single criterion for recirculation flow pump differential pressure and a single criterion for required high pressure safety injection (HPSI) pump flow during the recirculation surveillance test.

*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; 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 as follows:

The primary function of the HPSI pumps is to inject borated water into the RCS under accident conditions. The proposed change establishes common limits for all three HPSI pumps which will ensure the HPSI pumps can deliver a flow equal to or greater than that assumed in the Waterford 3 safety analyses. The proposed change is required because the existing Technical Specification resulted in the B HPSI having to be declared INOPERABLE due to an increase in performance after recent maintenance. Thus, the proposed change will allow improved HPSI system performance. Because the proposed change will ensure that the HPSI pumps deliver a flow greater than or equal to the flow assumed in existing safety analyses, there is no increase in the probability or consequence of any accident previously evaluated as a result of this change.

The proposed change refines the minimum acceptance criteria for HPSI pump surveillance requirements. There is no change in plant configuration or plant operation associated with this change. Because the HPSI pumps will perform as required for accident mitigation, the proposed change does not create the possibility of a new or different kind of accident.

Safety margin is established through the Waterford 3 safety analysis. Since the proposed change preserves all assumptions and results for the safety analyses, there is no reduction in any margin of safety related to the proposed change.

The staff has reviewed the licensee's evaluation and finds it acceptable. Therefore based on the above, the staff proposes to determine that the change does not involve a significant hazards consideration.

*Local Public Document Room Location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

*Attorney for licensee:* Ernest L. Blake, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

*NRC Project Director:* Frederick J. Hebdon

**Pacific Gas and Electric Company, Docket No. 50-133, Humboldt Bay Power Plant, Unit 3, Eureka, California.**

*Date of Amendment Request:* January 18, 1990 (Reference LAR 90-01)

*Description of Amendment Request:* The proposed amendments would revise the Technical Specifications (TS) for the Humboldt Bay Power Plant, Unit 3 to incorporate organization changes into Section VII, "Administrative Controls." The proposed TS changes would: (1) delete the organizational charts for the Offsite and Plant Staff Organizations and replace them with text imposing the essential administrative requirements for these organizations; (2) change the title of one member of the Plant Staff Review Committee (PSRC); (3) change the person which the General Office Nuclear Plant Review and Audit Committee (GONPRAC) must report to and advise; and (4) revise the membership of the GONPRAC. The specific TS changes proposed are as follows:

(1) Figures VII-1 and VII-2, the organizational charts for the "Offsite Organization" and the "Plant Staff Organization" would be deleted as would references to them. Section VII.B, "Organization," would be amended by adding the following text containing the essential administrative requirements for these organizations.

*Insert to be Added to Section VII.B, "Organization:"*

Onsite and offsite organizations shall be established for plant operation and corporate management, respectively. The onsite and offsite organizations shall include the positions for activities affecting the safety of the nuclear power plant.

a. Lines of authority, responsibility, and communication shall be established and defined for the highest management levels through intermediate levels to and including all operating organization positions. These relationships shall be documented and updated, as appropriate, in the form of organization charts, functional descriptions of departmental responsibilities and relationships, and job descriptions for key personnel positions, or in equivalent forms of documentation. These requirements shall be documented in the Vice President, Nuclear Power Generation Department Procedures.

b. The Plant Manager shall be responsible for overall unit safe operation and shall have control over those onsite activities necessary for safe operation and maintenance of the plant.

c. The Vice President, Nuclear Power Generation shall have corporate responsibilities for overall plant nuclear safety and shall take any measures needed to ensure acceptable performance of the staff in operating, maintaining, and providing technical support to the plant to ensure nuclear safety.

d. The individuals who train the operating staff and those who carry out health physics and quality assurance functions may report to the appropriate onsite manager; however, they shall have sufficient organizational freedom to ensure their independence from operating pressures.

(2) TS VII.C.2.d and VII.D.1.b would be revised to change the title of the "Senior Chemical and Radiological Engineer" to "Senior Radiation Protection Engineer" on the plant staff

and the Plant Staff Review Committee, respectively.

(3) TS VII.D.2.a, "General Office Nuclear Plant Review and Audit Committee (GONPRAC)", would be revised to require the CONPRAC to report to and advise the Vice President Nuclear Power Generation rather than the President.

(4) TS VII.D.2.b, "General Office Nuclear Plant Review and Audit Committee Composition," would be revised to change the Chairman from Vice President, Nuclear Power Generation, to Manager, Nuclear Safety Assessment and Regulatory Affairs; change the Vice Chairman from Assistant to the Vice President, Nuclear Power Generation, to Manager, Nuclear Operations Support; delete the Director, Nuclear Administration and Support Services, as a GONPRAC member and add the Plant Manager, Diablo Canyon Power Plant as a GONPRAC member.

The deletion of the organization charts is consistent with Generic Letter 88-06, issued by NRC on March 22, 1988. Similar TS changes were authorized for the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, by license amendments issued July 25, 1988; Diablo Canyon 1 and 2 are also PG&E facilities. The revisions to the membership and reporting relationship of the GONPRAC were previously authorized for Diablo Canyon 1 and 2 by license amendments issued December 4, 1989. Authorization of the same revisions to the GONPRAC for Humboldt Bay Unit 3 is necessary for consistency since the GONPRAC provides the same offsite organization oversight function for both Diablo Canyon 1 and 2 and Humboldt Bay Unit 3. The licensee states that these changes are consistent with PG&E Nuclear Power Generation organizational changes made to consolidate and strengthen activities related to independent technical assessments of plant safety.

*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 submittals of January 18, 1990, 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 are administrative in nature and do not affect the probability or consequences of any accident identified in the SAFSTOR Decommissioning Plan or the function of the Plant Staff Review committee.

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?

The proposed changes are administrative in nature and do not affect any plant systems, plant operations, or the type of accidents that might occur at Humboldt Bay.

Therefore, the proposed changes do 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 proposed changes are administrative in nature and do not affect margin of safety.

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 significant hazards consideration.

*Local Public Document Room Location:* Eureka-Humboldt Country Library, 421 I Street (County Court House), Eureka, California 95501.

*Attorney for Licensee:* Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7441, San Francisco, California 94210.

*NRC Division Director:* Richard L. Bangart

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York**

*Date of amendment request:* January 12, 1990

*Description of amendment request:* The proposed amendment would change the setpoint of the 4KV emergency bus undervoltage relay used for degraded voltage conditions to reflect changes to the reserve station transformer tap settings which are being made during the 1990 refueling outage. The proposed amendment would also remove operating restrictions imposed by the NRC in Amendment No. 120, issued November 18, 1988.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information.

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed setpoint change does not alter the AC electrical distribution system's ability to meet normal or post-accident requirements. The Class IE equipment connected to the emergency bus are protected against sustained degraded voltage conditions. The Final Safety Analysis Report (FSAR) analyses described in Section 8.6.3 are unaffected by this change.

The proposed change to remove Cycle 9 limitations is purely administrative in nature and cannot increase the probability or consequences of the plant's accident analyses as documented in the FSAR or the NRC staff's Safety Evaluation Report (SER).

2. Create the possibility of a new or different kind of accident from those previously evaluated. The proposed revision to the degraded grid (second level) undervoltage relay setpoint does not introduce any new failure modes, nor does it allow plant operation in an unanalyzed configuration.

The administrative change which extend the provisions of the degraded grid (second level) undervoltage technical specification beyond Cycle 9 are purely administrative, and, as such, cannot create new or different kinds of accidents.

3. Involve a significant reduction in the margin of safety. The margin between anticipated bus voltage and the degraded grid (second level) undervoltage protection relay setpoint is increased by 10 V with this proposed setpoint change. This provides an increase in the safety margin by reducing the

potential for voltage transients during manual bus transfer.

The purely administrative change which removes the Cycle 9 restrictions on plant operations during degraded grid (second level) undervoltage conditions cannot impact or affect the margin of safety.

The staff has reviewed and agrees with the licensee's proposed analysis of the no significant hazards consideration determination. Based on the review and the above discussion, the staff proposed to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

*Attorney for licensee:* Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

*NRC Project Director:* Robert A. Capra

**Public Service Company Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Weld Country, Colorado**

*Date of amendment request:* January 25, 1990

*Description of amendment request:* This proposed amendment is an administrative change that would revise the Technical Specifications to correct titles for management positions and add the nuclear training and support manager to the Nuclear Facility Safety Committee membership.

*Basis for proposed no significant hazards consideration determination:* The licensee has submitted a no significant hazards consideration analysis in accordance with the requirements of 10 CFR Parts 50.91 and 50.92. The licensee's analysis of significant hazards considerations follows:

Changes are made to Administrative Controls Specifications AC 7.1.1, AC 7.1.2, and portions of AC 7.1.3 to incorporate changes to certain Fort St. Vrain management titles. These changes do not result in any decrease in management control over nuclear operations, nor do they decrease the effectiveness and competency of the Plant Operations Review Committee or Nuclear Facility Safety Committee. The addition of the Nuclear Training and Support Manager to the NFSC Membership enhances NFSC review capabilities. The address change for the Annual Radiological Environmental Monitoring Report is in accordance with 10 CFR 50.4.

Based on the above evaluation, it is concluded that operation of Fort St. Vrain in accordance with the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. Therefore, this change will not increase any risk to the health and safety of the public nor does it involve any significant hazards.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Greeley Public Library, City Complex Building, Greeley, Colorado

*Attorney for licensee:* J. K. Tarpey, Public Service Company Building, Room 900, 550 15th Street, Denver, Colorado 80202

*NRC Project Director:* Seymour H. Weiss

**Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of amendment request:* December 24, 1987 and February 26, 1990

*Description of amendment request:* The proposed amendment revises Salem Unit 2 Technical Specifications 3/4.3.4 and the associated bases for Turbine Overspeed Protection surveillance requirements. The amendment would change the surveillance test frequency of the turbine stop valves, control valves, hot reheat stop valves, and hot reheat intercept valves. Instead of having a specific turbine valve test frequency, the licensee has proposed to use a turbine valve testing frequency determined by the methodology presented in Westinghouse Topical Report WCAP-11525 "Probabilistic Evaluation of the Reduction in the Turbine Valve Test Frequency," that meets the established NRC acceptance criteria for the probability of a missile ejection incident of less than $1.0 \times 10^{-5}$ per year. The turbine valve test interval will not exceed one year.

Salem Unit 1 currently has no technical specifications addressing turbine overspeed protection. This amendment would add these specifications to Salem Unit 1 Technical Specifications.

*Basis for proposed no significant hazards consideration determination:* Evaluations of turbine valve surveillance intervals have shown that relaxation of the turbine valve surveillance frequency may be justified via WCAP-11525 methodology. WCAP-11525 establishes acceptance criteria for turbine valve test frequency and demonstrates that increases in the interval between turbine valve functional tests can be achieved without exceeding the NRC acceptance criteria (less than $10^{-5}$ per year) for the probability of turbine missile ejection incident. In the case of Salem Unit Nos. 1 and 2, the licensee has calculated the total turbine missile generation probability for each of the Salem units to be less than $1.0 \times 10^{-5}$ per year and has supplied sufficient information to support the amendment request to extend turbine valve surveillance intervals based on WCAP-11525. The licensee has committed to: (1) share all available turbine valve failure information with Westinghouse Corporation, the manufacturer, for the purpose of tracking changes in valve component failure rates; (2) establish and maintain, in an auditable manner, valve failure rate information to be reviewed at least once every three years and updated when more than minor changes occur in the data; and (3) review and reevaluate, in accordance with 10 CFR 50.59, the turbine testing probabilistic analysis (by methodology of WCAP-11525) when any major changes to the turbine system are made, or when a significant upward trend in the valve failure rate data is identified.

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 licensed under 10 CFR 50.22 involves no significant hazards consideration, if the operation of the facility is in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the proposed amendment to determine if a significant hazards consideration exists:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The referenced analysis as reported in WCAP-11525 provides an evaluation probability of turbine missile ejection for the purpose of justifying the reduction in the frequency of turbine valve testing. In a letter to Westinghouse Electric Corporation dated February 2, 1987 (C. E. Rossi, USNRC to J. A. Martin, Westinghouse), the Commission established acceptable criteria for the probability of generating a turbine missile from an unfavorably oriented turbine (acceptable probability of missile generation of less than $1.0 \times$

$10^{-5}$). The evaluation in WCAP-11525 shows that the probability of a missile ejection incident for turbine valve testing intervals of up to one year is significantly less than the established acceptance criteria. Each of the Salem units has a total turbine missile generation probability of less than 1.0 X $10^{-5}$ per year.

For Salem Unit 2 the small change in the probability of generating a turbine missile with longer turbine valve testing intervals does not represent a significant increase in the probability or consequences of an accident previously evaluated.

Salem, Unit 1 does not currently have technical specifications for turbine valve surveillance testing. The addition of the surveillance tests represents additional requirements that must be met to assure that turbine valves are operable and therefore, will not cause an increase in the probability or consequences of an accident.

2. Does the change create the possibility of a new or different kind of accident from any previously evaluated?

The proposed amendment reduces the frequency at which turbine valves are tested for Salem, Unit 2 and establishes required testing of Salem Unit 1 turbine valves. The proposed amendment does not change the kind, number, or type of overspeed protection components available. Changing the frequency of turbine valve testing does not result in a significant change in the failure rate or change failure modes of the turbine valves. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety.

As noted above and as shown in WCAP-11525, this change to the Salem Unit 2 Technical Specifications will not result in a significant reduction in the margin of safety, because the probability of missile ejection remains acceptably small and within guidelines established by the NRC staff.

Addition of a similar specification to the Salem Unit 1 Technical Specifications does not involve reduction in a margin of safety since the proposed change imposes an additional limitation not currently included in the Salem Unit 1 specifications.

The staff has reviewed the licensee's submittal and has determined that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

*Attorney for licensee:* Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

*NRC Project Director:* Walter R. Butler

**System Energy Resources, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Date of amendment request:* February 9, 1990

*Description of amendment request:* The proposed amendment would add two smoke detectors and room numbers to Table 3.3.7.9-1, as well as rename a room described in Table 3.3.7.9-1, as a result of design changes. These design changes are for construction of a new snubber test facility in the Auxiliary Building and renovation of an existing room in the Control Building.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Systems Energy Resources, Inc. (the licensee) has reviewed the proposed changes and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

a. The proposed change expands an existing smoke detection zone to monitor two new rooms and their respective fire hazards. Consequently, the level of smoke detection capability will not be reduced. The analysis of safe shutdown in the event of a fire (UFSAR Appendix 9C) is not adversely affected by this change.

b. The renovation of the 93'-0" Elevation of the Control Building will not add, remove, or relocate any fire detection instrumentation identified in Technical Specification Table 3.3.7.9-1. The proposed change renames an existing room and does not reduce the level of smoke detection capability. The analysis of safe shutdown in the event of a fire (UFSAR Appendix 9C) is not adversely affected by this change.

c. Therefore, there is no increase in the probability or consequences of a previously analyzed accident due to this.

2. This change would not create the possibility of a new or different kind fo accident for many previously evaluated.

a. The proposed changes do not postulate fires in areas of the plant in which fires were not previously postulated and no new or different failure modes are created. The first change will expand an existing smoke detection zone to monitor two new rooms and their respective fire hazards. The second change does not add, remove or relocate any fire detection instrumentation identified in Technical Specification Table 3.3.7.9-1 but renames a room identified in the Table.

b. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. This change would not involve a significant reduction in the margin of safety.

a. The bases for Technical Specification 3.3.7.9, as it relates to the proposed changes, is to ensure availability of adequate warning capability for prompt detection of fires. Consequently, prompt detection of fires will reduce the potential for damage to safety-related equipment.

b. Expanding Detection Zone 2-9 to monitor two newly created rooms and their respective fire hazards will maintain the existing level of fire detection in accordance with the bases for Technical Specification 3.3.7.9. The renaming of a room identified in Technical Specification Table 3.3.7.9-1 will not reduce the present level of fire detection and does not compromise the bases for this Technical Specification.

c. Therefore, this proposed change will 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. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

*NRC Project Director:* Elinor G. Adensam

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment requests:* March 9, 1990 (TS 90-03)

*Description of amendment requests:* The Tennessee Valley Authority (TVA) has proposed changes to Sections 1, Definitions; 3/4.3, Instrumentation; 3/4.11, Radioactive Effluents; 3/4.12, Radiological Environmental Monitoring; and 6, Administrative Controls, of the Sequoyah Nuclear Plant (SQN), Units 1 and 2, Technical Specifications (TS). The following provides a summary of the proposed changes.

1. Incorporate programmatic controls in the Administrative Controls Section of the TS that satisfy the requirements of 10 CFR 20.106, 40 CFR Part 190, 10 CFR 50.36a, and Appendix I to 10 CFR Part 50.

2. Relocate the existing procedural details involving radioactive effluent monitoring instrumentation, control of liquid and gaseous effluents, equipment requirements for liquid and gaseous effluents, radiological environmental monitoring, and radiological reporting details from the TS to the Offsite Dose Calculation Manual (ODCM).

3. Relocate the definition of solidification and existing procedural details on solid radioactive wastes to the Process Control Program (PCP).

4. Simplify the associated reporting requirements for the Annual Radiological Environmental Operating Report and the Semiannual Radioactive Effluent Release Report.

5. Simplify the administrative controls for changes to the ODCM and PCP.

6. Add record retention requirements for changes to the ODCM and PCP.

7. Update the definitions of the ODCM and PCP consistent with these changes.

8. Relocate the definition of source check to the ODCM.

9. Amend the applicability requirement for SQN's gas monitoring system of the waste gas disposal system.

10. Retain SQN TS 6.15 for controlling major changes to radioactive waste treatment system under TVA's 10 CFR 50.59 process.

With the exception of the last three changes listed above, these changes are consistent with the model TSs provided in NRC Generic Letter 89-01.

*Basis for proposed no significant hazards consideration determination:* In its application, TVA provided the following information to support the proposed changes to the TS:

By letter dated January 31, 1989, NRC issued Generic Letter (GL) 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program (Generic Letter 89-01)." Enclosure 1 to GL 89-01 provided guidance to licensees for preparation of a license amendment to implement NRC recommended alternatives for Radiological Effluent Technical Specification (RETS). Tennessee Valley Authority's (TVA's) proposed technical specification (TS) change follows the guidance and recommendations of GL 89-01 for Sequoyah Nuclear Plant (SQN).

TVA's proposed TS change contains new programmatic controls for radioactive effluents and radiological environmental monitoring as provided in NRC's GL 89-01. NRC encourages licensees to amend their TSs to fulfill the goal of the Commission's Interim Policy Statement for TS improvements. TVA's proposed change continues to satisfy the requirements of 10 CFR 20.106, 40 CFR Part 190, 10 CFR 50.36a, and Appendix I to 10 CFR 50. Relocation of procedural details into the PCP and ODCM provides a line-item improvement to the TSs and simplifies the associated reporting requirements and administrative control for changes to the PCP and ODCM. The procedural details for control of effluents are not required to be included in TS (10 CFR 50.36a). Programmatic controls for radiological effluent is implemented in the administrative section of TS (Section 6.0).

The Commission has provided standards for determining whether a significant hazards consideration 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.

TVA's proposed change is administrative in nature and provides programmatic controls for SQN's RETS that are consistent with regulatory requirements. Relocation of procedural details of the current RETS to the PCP or ODCM will not affect plant hardware or reduce the level of radiological effluent control. Under the proposed change, any future changes to the procedural details of the PCP or ODCM would be controlled by the Administrative Controls Section of SQN's TS. TVA's proposed change follows the guidance provided in NRC's GL 89-01. Since the changes do not affect the operability of plant equipment or alter the design basis of the plant, the probability or consequences of an accident previously evaluated have not been increased.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

No new accident scenarios will be created by TVA's proposed change since these changes are administrative in nature and do not affect plant hardware, system configuration, or SQN's design basis. TVA's proposed amendment incorporates programmatic control for RETS within the Administrtaive Controls Section of SQN's TS to satisfy the requirements of 10 CFR 20.106, 10 CFR Part 190, 10 CFR 50.36a, and Appendic I to 10 CFR Part 50. TVA's change is consistent with NRC's staff guidance as provided in GL 89-01. Consequently, the possibility of a new or different kind of accident from those previously analyzed is not created.

(3) Involve a significant reduction in a margin of safety.

The procedural details contained in SQN's current RETS have been relocated to SQN's ODCM or PCP. This relocation does not alter the applicable regulatory requirements and does not involve any changes to plant hardware or configuration. Consequently, TVA's proposed change does not reduce the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 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

**The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio**

*Date of amendment request:* May 20, 1988

*Description of amendment request:* The proposed amendment would revise the control rod scram accumulator alarm

setpoint from 1535 27 15 psig to greater than or equal to 1520 psig. This is proposed by the licensees in order to allow establishment of a higher setpoint (which is conservative in detecting a low pressure condition) in order to account for observed downward instrument drift.

*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 FR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensees have provided the following determination of whether the proposed amendment involves a significant hazards consideration.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the low pressure setpoint will not be allowed to be set below the present technical specification value, and in fact may be set at a more conservative position.

The proposed change does not create the possibility of a new or different kind of accident than previously evaluated because the required action is limited to the revision of the allowable alarm setpoint range and because the alarm setpoint may be set in a more conservative direction. This setpoint provides only an alarm and does not result in any system or component automatic actuations.

The proposed change does not involve a significant reduction in a margin of safety because allowing a more conservative alarm setpoint actually increases the margin of safety.

The staff has reviewed the licensees' determination as to whether the proposed amendment involves a significant hazards consideration and agrees with their determination. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards considerations.

*Local Public Document Room location:* Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John N. Hannon.

**The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio**

*Date of amendment request:* March 16, 1990

*Description of amendment request:* The proposed amendment would modify the Reactor Core Isolation Cooling (RCIC) equipment room differential temperature trip setpoint and allowable value contained in Table 3.3.2-2 of the Technical Specifications. The proposed amendment would provide a year-round value instead of the current value which is applicable only for lake water temperatures below 55 degrees Fahrenheit.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensees have provided the following analysis of no significant hazards considerations using the Commission's standards.

(1) The proposed change does not involve a significant increase in the probability or consequences of a previously evaluated accident.

The differential temperature isolation instrumentation provides monitoring for leaks. Therefore, the probability for leak initiation is not affected by the revision of the delta-T isolation setpoint.

The consequences of a previously evaluated accident also have not changed. The range of possible RCIC steamline breaks (up to and including a circumferential steamline break) is not affected by this proposed change. The leak detection isolation actuation instrumentation and alarms cover a wide range of steam piping breaks including both small leaks and large breaks in the RCIC line. As such, any significant leak in the RCIC Equipment Room will continue to be sensed by redundant and diverse instrumentation with appropriate setpoints for alarm and/or isolation capability. As such, the consequences of a RCIC steamline break will not change, and remain bounded by the steamline break outside of containment scenario analyzed in USAR Section 15.6.4. Thus, the consequences of a previously evaluated accident have not changed.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the differential temperature isolation actuation instrumentation is a monitoring system. Revision of the isolation setpoint of this monitoring system cannot create a new type of accident, since breaks of the RCIC steamline, up to and including a circumferential break, are bounded by other accidents presently analyzed in USAR Section 15.6.4.

(3) The proposed change does not involve a significant reduction in the margin of safety. There will still exist sufficient redundant and diverse leak detection instrumentation with appropriate setpoints to detect steam leaks/breaks in the RCIC area. This change does not, therefore, affect any accident analysis, nor does it have any adverse effect on performance characteristics of safety systems or accident consequences. As such, it will not result in a reduction in the margin of safety. Also, since this change will increase the reliability of the RCIC system by reducing the possibility of an unnecessary isolation of RCIC when it is being called upon to restore reactor water level, overall plant safety will be slightly increased.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and does not involve a reduction in the required margin of safety.

The staff has reviewed the licensees' analysis and concurs in their determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John N. Hannon.

**Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont**

*Date of amendment request:* March 5, 1990

*Description of amendment request:* The proposed amendment would eliminate the 3.25 limit on extending

surveillance intervals from the Technical Specifications. This change was recommended by NRC Generic Letter 89-14, "Removal of 3.25 limit on Extending Surveillance Intervals."

*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 a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

The removal of the 3.25 limit on extending surveillance intervals from definition "Y", Surveillance Frequency, of the Vermont Yankee Technical Specifications simply deletes a restrictive administrative control from the Surveillance Testing Program. The testing required by Vermont Yankee's Technical Specifications remains in effect without any changes. Thus, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated. It has been determined (see Generic Letter 89-14) that the change in this limit permits an allowable extension of the normal surveillance interval to facilitate surveillance scheduling and consideration of plant operating conditions that may not be suitable for conducting the surveillance and reduces the administrative burden associated with its use, therefore has a positive affect on safety.

The proposed change does not create the possibility of a new or different kind of accident previously evaluated because no physical alterations of plant configuration, changes to setpoints, or safety limits are proposed. As stated above, the removal of the 3.25 limit does not influence, impact, or contribute to the probability or consequences of an accident. The Technical Specifications will continue to control the surveillance testing program and appropriate actions will be taken when or if specified test intervals are extended or tests are missed.

The proposed change does not involve a significant reduction in a safety margin because it does not affect operating practices, limits, or safety related equipment. The margin of safety provided by the current technical specifications remains unchanged.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposed to make a no significant hazards consideration determination.

*Local Public Document Room location:* Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

**Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington**

*Date of amendment request:* February 27, 1990

*Description of amendment request:* The proposed amendment revises safety limits to be applicable during the sixth cycle of power operation. The amendment would allow the use of Cycle 6 reload fuel in WNP-2. The WNP-2 Cycle 6 core design includes 144 unirradiated assemblies of which 136 are ANF 8x8 and 8 assemblies are other vendor's lead test assemblies. The reload will also include 56 initial irratiated P8x8R assemblies fabricated by General Electric (GE) for the initial reactor fueling. These GE fuel assemblies were previously discharged from WNP-2 and will be reinserted into the WNP-2 core in edge locations with this design. Of these assemblies, 32 were discharged from WNP-2 after Cycle 1, and 24 were discharged after Cycle 2. All 56 have been visually inspected and found to be acceptable for reuse based on the inspection.

Included in the WNP-2 Cycle 6 reload are four GE lead fuel assemblies (LFAs) and four ABB Atom (ABB) LFAs. These LFAs have been designed to be compatible with the reload assemblies that will constitute the remainder of the reload batch for Cycle 6 (Fresh Assemblies). The licensee would load the LFAs in core locations which have been analyzed to have sufficient margin such that the LFAs are not expected to be the limiting assemblies in the core on either a nodal or an assembly power basis. This approach is to prevent the possibility of the LFAs from ever being the limiting fuel assemblies.

Specifically the proposed license amendment would revise the Technical Specification (TS) index to include reference to four curves which are being added to the technical specifications. The new curves provide limits for the maximum average planar linear heat generation rate (MAPLHGR) and linear heat generation rate (LHGR) for the two new types of lead fuel assemblies.

The amendment would revise the definition of critical power ratio given in TS 2.0. The revision makes the definition more general to include CPRs calculated for the new fuel designs in the lead fuel assemblies. The amendment makes a similar revision to the introduction to bases section 2.0 to show that it covers all fuel types.

The amendment would revise TS 3/4.2.1, "Average Linear Heat Generation Rate," to make the limiting conditions for operation, action statements, and surveillance requirements apply to the new fuel designs in the new lead fuel assemblies. Two new figures are added to TS 3/4.2.1 (Figure 3.2.1-7, "Maximum Average Planar Linear Heat Generation Rate Versus Bundle Average Exposure, SVEA-96 Lead Fuel Assemblies," and Figure 3.2.1-8, "Maximum Average Planar Linear Heat Generation Rate Versus Bundle Average Exposure, GE 11 Lead Fuel Assemblies"). These new figures give the MAPLHGR limits for the new lead fuel assemblies.

The amendment would revise TS 3/4.2.3, "Minimum Critical Power Ratio," to incorporate new MCPR values specific to cycle six in Table 3.2.3-1, "MCPR Operating Limits." Figure 3.2.3-1, "Reduced Flow MCPR Operating Limit," is revised by expanding the title to show that it applies to all five of the fuel assembly designs which will be in the core in cycle six. The curve will apply to the GE Initial core fuel, the ANF reload fuel, the ANF 9x9 lead fuel assembly fuel, the GE 11 lead fuel assembly fuel, and the SVEA-96 lead fuel assembly fuel.

The amendment would revise TS 3/4.2.4, "Linear Heat Generation Rate," by rewording the limiting condition of operation to show that it supplies to all fuel types in the core. Reference to two new figures is added to the limiting condition for operation and the two new figures are added to the section. Purposed new figure 3.2.4-4 is added to give the linear heat generation rate limit versus average planar exposure for SVEA-96 lead fuel assemblies. Figure 3.2.4-5 is added to give the linear heat generation rate limit versus average planar exposure for GE 11 lead fuel assemblies.

The amendment would revise TS 5.3.2, "Reactor Core, Fuel Assemblies," to show that the usage of the additional lead fuel assemblies is provided for.

Bases sections for the revised TS would also be revised as necessary to show the bases for the TS as revised.

The license amendment application submittal of February 27, 1990, consists of five documents: WNP-2 Cycle 6 Reload Summary Report, Technical Report No. WPPSS-EANF-126; WNP-2 Cycle 6 Plant Transient Analysis, ANF-90-01; WNP-2 Cycle 6 Reload Analysis, ANF-90-02; GE 11 Lead Fuel Assembly Report for Washington Public Power Supply System Nuclear Project No. 2 Reload 5 Cycle 6, and; Supplemental

Lead Fuel Assembly Licensing Report SVEA-6 LFAs WNP-2—Summary. The first of these documents includes an attachment which provides a summary justification for the TS changes. The WNP-2 Cycle 6 Reload Analysis is intended to be used in conjunction with ANF Topical Report XN-NF-80-19(A). Volume 4, Revision 1, "Application of the ENC Methodology to BWR Reloads," which provides a detailed description of the methods and analyses used.

*Basis for Proposed No Significant Hazards Consideration Determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The proposed amendment to the WNP-2 TS to support this reload is very similar to example (iii) provided by the Commission (51 FR 7751, March 6, 1986) of the types of amendment not likely to involve significant hazards considerations.

Example (iii) is an amendment to reflect a core reload where:

1. No fuel assemblies significantly difference from those found previously acceptable to the Commission for the previous core at the facility in question are involved.

2. No significant changes are made to the acceptance criteria for the Technical Specifications;

3. The analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed; and

4. The NRC has previously found such methods acceptable.

Items 2, 3, and 4 are adhered to explicitly, while the question of the significance of differences in the lead assemblies may merit further examination. The NRC has found the inclusion of lead fuel assemblies in reload batches acceptable when they are analyzable by the methodology applicable to the existing fuel, where the licensee has performed analyses to show that the insertion of the lead assemblies will have negligible effects upon core wide transient performance, where the licensee has done specific analyses of the lead assemblies to develop operating limits applicable to them or to demonstrate that safety is ensured by the operating limits applicable to the other assemblies, and where the lead assemblies are to be placed in the core at locations where they will not be limiting. Since the licensee has argued that these conditions apply, the Commission finds that the eight lead fuel assemblies are not significantly different from those assemblies previously found acceptable.

In addition to providing examples of amendments not likely to involve a significant hazards consideration, the Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has reviewed the use of the Cycle 6 reload design in WNP-2 and concludes that it does not involve an unreviewed safety question. The Supply System has also evaluated this request per 10 CFR 50.92 and determined that it does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

A multidiscipline analysis has been performed on the proposed Cycle 6 reload design to examine the probability or the consequences of an accident or safety related equipment malfunction and the analysis demonstrates no significant change in previously evaluated accidents.

The mechanical, thermal hydraulic, and neutronic characteristics of the reload bundles (including the LFA's) have been analyzed and in all cases the evaluation of those changes shows that the design complies with established criteria, as approved by the NRC. The results of those analyses are consistent with previous results, and have not resulted in significant reduction in margin of safety (see 3 below).

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The reload fuel has been analyzed in detail and has been found to be sufficiently similar to the previous reload fuel whose analyses have been reported in the FSAR to preclude the possibility that an accident or malfunction of a different type than that previously analyzed is credible (Attachments III, IV, V and VI). These analyses provide assurance that the proposed fuel loading design does not effect previous analyses bases.

3. Create a significant reduction in the margin of safety.

The Cycle 6 reload design is the subject of several wide-ranging analyses, the intent of all of which was to examine the applicability of the existing WNP-2 Technical Specifications to the WNP-2 core. These analyses confirmed some of the existing operating limits and recommended changes in others, thereby setting thermal limits for WNP-2 specific to the Cycle 6 core. With operation guided by this set of thermal limits, there is no reduction in safety margin for operation of WNP-2.

The NRC staff has reviewed the licensee's analysis and based on that review, it appears that the three criteria are satisfied. Therefore the staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

*Attorneys for licensees:* Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G. E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

*NRC Project Director:* Charles M. Trammell, Acting

**Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington**

*Date of amendment request:* March 2, 1990

*Description of amendment request:* The proposed amendment would revise Technical Specification 3.8.1.1, "Electrical Power Systems, A.C. Sources." Specifically, the licensee proposed revising action statements for the specification to change the actions resulting in starting the three emergency diesel generators for the purpose of testing them.

*Basis for Proposed No Significant Hazards Consideration Determination:* The objective of the proposed amendment is to eliminate unnecessary starts of the emergency diesel generators. NRC Generic Letter 84-15 expressed concern that excessive testing could contribute to the degradation of diesel generators.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed

amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The Supply System has reviewed the revision per 10 CFR 50.92 and provides the following in support of a finding for no significant hazards consideration. This change does not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The function of the AC sources to mitigate the consequence of an analyzed event is based on supplying sufficient power to equipment assumed to function during an accident. The proposed change does not propose any hardware changes such as changes to load capability or to the required loads assumed in analyzed accidents. The requested changes will affect the need to perform surveillance procedures so as to enhance DG reliability by reducing the number of starts required. Therefore the consequences of an accident previously evaluated is not increased.

2) Create the possibility of a new or different kind of accident from any previously evaluated.

The design function and operation of the DG system and the offsite power system is not affected by this change. There are no new modes of operation introduced. The reliability of the DG system to provide an emergency source of power is not reduced as no hardware changes are proposed and the proposed changes are enhancements to DG reliability and plant staff response capability. Therefore there is no possibility of a new or different kind of accident being introduced due to this change.

3) Involve a significant reduction in a margin of safety.

The margin associated with operation with inoperable AC sources is based on probabilities of a design basis event occurring, and the availability and reliability of the remaining operable sources. As discussed above, the probability of an event is not increased due to this requested change. The allowed outage times and minimum required systems and components is not affected by this change. The availability and reliability is being enhanced by the reduction in required DG starts. Therefore, the margin of safety is not reduced by this change.

The NRC staff has reviewed the licensee's analysis and based on that review, it appears that the three criteria are satisfied. Therefore the staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

*Attorneys for licensees:* Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G. E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

*NRC Project Director:* Charles M. Trammell, Acting

**Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington**

*Date of amendment request:* March 2, 1990

*Description of amendment request:* The proposed amendment would revise Technical Specification Section 3/4.8.2, "Electrical Power Systems, D.C. Sources." Specifically, the licensee proposed revising surveillance requirement 4.8.2.1.d.2 by replacing the specified battery load profile.

*Basis for Proposed No Significant Hazards Consideration Determination:* The licensee revised the battery load profiles to reflect the results of recent reviews of battery capabilities. The reviews were due to: (1) an increase in load to one battery; (2) an increase in the initial current to two batteries to correct an existing error; and (3) a desire to identify margin and change the load profiles accordingly. The third review was done so that should a new load be identified, use of the margin will avoid the necessity of submitting a technical specification change request.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The Supply System has reviewed the revision per 10 CFR 50.92 and provides the following in support of a finding for no significant hazards consideration. This change does not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because calculations have been performed demonstrating that the battery can accommodate the increased load and meet all requirements for operability. Hence the operation of the battery under normal and upset conditions is not degraded and this change does not impact the probability or consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any previously evaluated because the battery is not being changed, nor are any changes being made to the way it is being utilized or asked to perform. The additional load being added has been evaluated, by calculation, as not resulting in any changes to the battery capability and confirmed the battery as still capable of fulfilling the licensing bases requirements. Hence no new or different kind of accident is credible due to this change.

3) Involve a significant reduction in a margin of safety because as discussed above calculations have been performed to confirm that the battery will remain operable and meet the Surveillance Requirements of Technical Specification 4.8.2.1. Hence the battery will continue to fulfill its safety requirements. The impact of an increased load profile is to potentially shorten the life of the battery and dictate battery replacement. However in meeting the requirements of the Technical Specification Surveillance Requirements in Section 4.8.2.1 the required margin of safety is assured.

The NRC staff has reviewed the licensee's analysis and based on that review, it appears that the three criteria are satisfied. Therefore the staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

*Attorneys for licensees:* Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G. E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

*NRC Project Director:* Charles M. Trammell, Acting

**Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of amendment request:* March 2, 1990

*Description of amendment request:* The proposed change would revise the Technical Specification Table of Contents and Technical Specification Surveillance Requirement 4.8.4.1 to delete references to Table 3.8-1 which was previously removed from the Technical Specifications in Amendment No. 28.

*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; 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 an analysis that addressed the above three standards in the amendment application.

The following sections discuss the proposed changes under the three 10 CFR 50.92 standards:

*Standard 1* - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

These changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. This is an administrative change which does not change any of the requirements of the current Technical Specifications. This change does not include any technical changes and is considered to be editorial in nature.

*Standard 2* - Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated

These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes are administrative in nature. No physical alterations to the plant equipment or plant operations are proposed.

*Standard 3* - Involve a Significant Reduction in a Margin of Safety

The proposed amendment does not involve a significant reduction in a margin of safety. This change merely deleted references to a table which was previously removed from Technical Specifications. This change is an editorial change which has no effect on any margin of safety.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

*Local Public Document Room Location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* Frederick J. Hebdon

## 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. 50-373 and 50-374, LaSalle County Station, Unit Nos. 1 and 2, LaSalle County, Illinois**

*Dates of application for amendments:* July 28, 1987, supplemented March 16 and June 23, 1989, and further clarified July 3 and October 26, 1989 and February 26, 1990

*Brief description of amendments:* The amendments revise the LaSalle County Station, Units 1 and 2 Technical Specifications to clarify the requirements for the frequency of fast starting and loading of the diesel generators from ambient conditions and to conform with the diesel generator test schedule recommendations given in NRC Generic Letter 84-15. The Bases were also revised to reflect the changes to the Technical Specifications.

*Date of issuance:* March 15, 1990

*Effective date:* March 15, 1990

*Amendment Nos.:* 72 and 56

*Facility Operating License Nos. NPF-11 and NPF-18.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 7, 1987 (52 FR 37543), May 17, 1989 (54 FR 21302). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 1990.

*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

**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:* September 30, 1988, as supplemented on January 10, 1989, March 30, 1989, April 14, 1989, October 19, 1989, January 4, 1990 and February 8, 1990.

*Brief description of amendment:* The amendment revises the Indian Point Unit No. 2 Operating License and Technical Specifications to authorize operation of the plant at core power levels not in excess of 3071.4 Mwt (NSSS power level of 3083.4 Mwt).

*Date of issuance:* March 7, 1990

*Effective date:* March 7, 1990

*Amendment No.:* 148

*Facility Operating License No. DPR-26:* Amendment revised License Condition 2.C.(1) Maximum Power Level and the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 31, 1989 (54 FR 23309). The Commission's related evaluation of the

amendment is contained in a Safety Evaluation dated March 7, 1990.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

**Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan**

*Date of application for amendments:* February 6, 1987 and supplemented on July 23, 1987, September 8 and 21, 1988 and April 12, and December 21, 1989.

*Brief description of amendments:* This amendment corrects editorial and typographical errors, capitalizes defined terms, deletes organization charts according to Generic Letter 88-06, deletes the equipment qualification reference, and deletes the duplicate reporting requirements for environmental monitoring.

*Date of issuance:* March 16, 1990

*Effective date:* March 16, 1990

*Amendments Nos.:* 102

*Facility Operating Licenses No. DPR-6.* The amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 30, 1987 (52 FR 49222), October 5, 1988 (53 FR 39167), and December 14, 1988 (53 FR 50325). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 16, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* North Central Michigan College 1515 Howard Street, Petoskey, Michigan 49770.

**Duke Power Company, Dockets Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* December 21, 1989

*Brief description of amendments:* The amendments change the Technical Specifications (TSs) for Units 1 and 2 by removing the provision of TS 4.0.2 that limits the combined time interval for three consecutive surveillances to less than 3.25 times the specified interval. The amendments are in accordance with Generic Letter 89-14, "Line-Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals."

*Date of issuance:* March 13, 1990

*Effective date:* March 13, 1990

*Amendments Nos.:* 104, 86

*Facility Operating Licenses Nos. NPF-9 and NPF-17:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 7, 1990 (55 FR 4267). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 13, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* January 17, as supplemented January 29, 1990.

*Brief description of amendments:* The amendments change the Technical Specifications (TSs) for Units 1 and 2 by replacing the values of cycle-specific parameter limits in core-related specifications with a reference to a Core Operating Limits Report (COLR) which will contain the values of these limits. These amendments also include the addition of the COLR to the Definitions section of the TSs and to the reporting requirements in the TS Administrative Controls. Additionally, the amendments change the TS Table of Contents and delete several obsolete footnotes.

*Date of issuance:* March 15, 1990

*Effective date:* March 15, 1990

*Amendments Nos.:* 105, 87

*Facility Operating Licenses Nos. NPF-9 and NPF-17:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 7, 1990 (55 FR 4268). Although the licensee's January 29, 1990, submittal was not referenced in the initial notice, the changes proposed in the submittal were described in the notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

**Duke Power Company, Dockets Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* October 6, 1989, as supplemented January 31, 1990.

*Brief description of amendments:* The amendments change TS 4.9.1.3 to allow greater flexibility in isolating reactor makeup water supply to the reactor coolant system (NC) during refueling operations.

*Date of issuance:* March 16, 1990

*Effective date:* March 16, 1990

*Amendment Nos.:* 106, 88

*Facility Operating License Nos. NPF-9 and NPF-17:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 7, 1990 (55 FR 4266). The licensee's supplemental letter of January 31, 1990, provided additional supporting information and modified the initial request to provide greater specificity (i.e., to identify the six alternate valves) and to increase their surveillance frequency. This supplemental letter did not alter the action noticed or affect the initial determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 16, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

**Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania**

*Date of application for amendments:* October 16, 1989

*Brief description of amendments:* The amendments revise miscellaneous requirements in the Technical Specifications for both units as follows: testing frequency of the Auxiliary River Water System (Unit 1) and Standby Service Water System (Unit 2), testing frequency of the Supplementary Leak Collection System, sealed sources, and the Unit 1 fuel building ventilation system.

*Date of issuance:* March 21, 1990

*Effective date:* March 21, 1990

*Amendment Nos.:* 151 for Unit 1; 28 for Unit 2

*Facility Operating License Nos. DPR-66 and NPF-73.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 29, 1989 (54 FR 49129). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 21, 1990

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

**Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania**

*Date of application for amendments:* December 12, 1989

*Brief description of amendments:* The amendments revise specification 4.0.2 of the Technical Specifications in accordance with guidance provided in NRC Generic Letter 89-14. Specifically, the amendments removed the requirement to combine the time interval for any three consecutive surveillance intervals and limiting the combined value to 3.25 times the duration of the specified surveillance interval.

*Date of issuance:* March 22, 1990

*Effective date:* March 22, 1990

*Amendment Nos.:* 152 for Unit 1; 29 for Unit 2

*Facility Operating License Nos. DPR-66 and NPF-73.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 24, 1990 (55 FR 2434). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 1990

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

**Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3, Nuclear Generating Plant, Citrus County, Florida**

*Date of application for amendment:* December 21, 1989

*Brief description of amendment:* This amendment allows the use of integrating alarming dosimeters as an alternative for meeting the requirements for entry into a high radiation area. The amendment also clarifies the escort functions provided by health physics representatives during entry into a high radiation area.

*Date of issuance:* March 13, 1990

*Effective date:* March 13, 1990

*Amendment No.:* 126

*Facility Operating License No. DPR-72.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 7, 1990 (55 FR 4270). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 13, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room Location:* Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

**Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan**

*Date of application for amendments:* September 6, 1988

*Brief description of amendments:* The amendments delete Figure 6.2-1, ("Organizational Relationships Within the American Electric Power System Pertaining to QA & QC and Support of the Donald C. Cook Nuclear Plant") and 6.2-, ("Facility Organization - Donald C. Cook - Unit No. 1" and "...Unit No. 2"), from the Technical Specifications in response to Generic Letter 88-06.

*Date of issuance:* March 9, 1990

*Effective date:* March 9, 1990

*Amendments Nos.:* 132 and 117

*Facility Operating License Nos. DPR-58 and DPR-74.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 19, 1989 (54 FR 15830). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 9, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

**Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* July 31, 1989 as supplemented December 13, 1989

*Brief description of amendment:* The amendment changed the Technical Specifications to (1) replace the current Station Operations Review Committee (SORC) membership requirements which specify membership by position title with membership requirements that are based on areas of functional expertise, (2) incorporate a requirement to have a shift Technical Advisor on shift, and (3) changes position titles and designates persons who would automatically assume the responsibilities of the Manager of Nuclear Operations if he is not available.

*Date of issuance:* March 19, 1990

*Effective date:* March 19, 1990

*Amendment No.:* 132

*Facility Operating License No. DPR-46.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 29, 1989 (54 FR 49134). The December 13, 1989 submittal provided additional clarifying information and did not change the finding of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 19, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

**Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2 Goodhue County, Minnesota**

*Date of application for amendments:* November 17, 1989

*Brief description of amendments:* The amendments delete the cycle-specific parameter limits from the technical specifications and locate them in the core operating limits report. These changes are in accordance with the guidelines given in our Generic Letter (GL) 88-16.

*Date of issuance:* March 13, 1990

*Effective date:* March 13, 1990

*Amendment Nos.:* 92 and 85

*Facility Operating Licenses Nos. DPR-42 and DPR-60.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 27, 1989 (54 FR 53209). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 13, 1990.

*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.

**Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska**

*Date of amendment request:* October 27, 1989 as supplemented January 11, 1990

*Brief description of amendment:* The amendment changed Fort Calhoun Technical Specifications (TS) to place operability and surveillance requirements on the alternate shutdown panels as requested by the staff.

*Date of issuance:* March 19, 1990

*Effective date:* The date prior to going critical after the Cycle 13 refueling is completed.

*Amendment No.:* 125

*Facility Operating License No. DPR-40.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 29, 1989 (54 FR 49137). The supplemental information dated January 11, 1990, clarified that control circuity is included in the TS and

does not change the staff's original finding of no significant hazards consideration or alter the action noted. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 19, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

**Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of application for amendments:* August 29, August 31, October 11, and November 14, 1989 and January 31 and February 8, 1990. The January 31 and February 8, 1990 supplemental letters provided corrected technical specification pages and did not increase the scope of the amendment request and did not affect the staff's no significant hazards determination.

*Brief description of amendments:* This change allowed a highly qualified individual, who does not hold a current, valid, senior reactor operator (SRO) license, to assume the duties of the Salem Operations Manager.

*Date of issuance:* March 7, 1990

*Effective date:* Unit 1, as of date of issuance and to be implemented within 60 days of the date of issuance; Unit 2, as of date of issuance and shall be implemented within 60 days of the date of issuance.

*Amendment Nos.* 110 and 89

*Facility Operating License Nos. DPR-70 and DPR-75.* These amendments revised the Technical Specifications.

*Date of Initial Notice in* **Federal Register:** September 15, 1989 (54 FR 38304) and December 13, 1989 (54 FR 51259). The Commission also issued a waiver of compliance on September 1, 1989 to allow implementation of this change while the amendments were being processed. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 7, 1990.

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

**South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina**

*Date of application for amendment:* July 21, 1989, as supplemented December 11, 1989, January 2, 1990, and February 6, 1990.

*Brief description of amendment:* The amendment revises Table 2.2-1 of Technical Specification (TS) 2.2.1, Reactor Trip System Instrumentation Setpoints, Table 3.3-2 of TS 3/4.3.1, Reactor Trip System Instrumentation, and Table 3.3-4 of TS 3/4.3.2, Engineered Safety Feature Actuation System Instrumentation to revise the reactor trip setpoints as a result of a change to the reactor coolant measurement system for the hot and cold legs to eliminate the resistance temperature device (RTD) bypass manifold and replace it with fast response RTDs located in reactor coolant cold leg and hot leg piping.

*Date of issuance:* March 15, 1990

*Effective date:* March 15, 1990

*Amendment No.:* 90

*Facility Operating License No. NPF-12.* Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 18, 1989 (54 FR 42864). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 15, 1990.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

**South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina**

*Date of application for amendment:* September 19, 1989, as supplemented December 11, 1989, and January 16, 1990.

*Brief description of amendment:* The amendment allows the use of the Babock & Wilcox kinetic sleeving process for steam generator tube repair in Technical Specification 3/4.4.5.4, Steam Generators.

*Date of issuance:* March 22, 1990

*Effective date:* March 22, 1990

*Amendment No.:* 91

*Facility Operating License No. NPF-12.* Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 10, 1990 (55 FR 948). The supplemental submittal did not change the amendment request and the initial determination was unaffected by the January 16, 1990 submittal. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 22, 1990.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendments:* January 12, 1990 (TS 90-05)

*Brief description of amendments:* The amendments modify the requirements on the containment ice condenser in the Sequoyah (SQN) Technical Specifications (TSs). One change revises Surveillance Requirement (SR) 4.6.5.1.b.2 to extend the 12-month ice weighing interval to 18 months. An associated 12-month SR for ice condenser lower inlet doors (SR 4.6.5.3.1.b) is extended to coincide with the proposed 18-month interval for weighing ice and to increase the sample size from 25 percent to 100 percent. Additionally, the minimum weight of ice in an ice basket is reduced in TS 3/4.6.5.1 from 1,200 pounds (lb) to 1,555 lb, thus lowering the overall ice condenser weight from 2,333,100 lb to 2,245,320 lb. A one-time TS provision contained in a footnote on each unit is no longer applicable and is deleted. Text changes are made to SRs 4.6.5.1.b, 4.6.5.3.1.b, and 4.6.5.3.2.b to delete requirements regarding test milestones that were previously completed during the first two years of Sequoyah operation and are no longer applicable.

*Date of issuance:* March 2, 1990

*Effective date:* March 2, 1990

*Amendment Nos.:* 131, 118

*Facility Operating Licenses Nos. DPR-77 and DPR-79.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 24, 1990 (55 FR 2457). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 1990

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

**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:* January 5, 1990 (TS 90-04)

*Brief description of amendments:* These amendments modify the Action Statement "a" for the Limiting Condition for Operation (LCO) 3.8.1.1, Alternating Current Sources, Operating, in the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specifications (TSs). The modified Action Statement "a" states clearly that with diesel generator train(s) 1A-A and/or 2A-A or 1B-B and/

or 2B-B inoperable the units may continue operating for 72 hours before shutting down if the inoperable train can not be returned to operable status. During this 72 hours until the inoperable train is made operable, the remaining alternating current sources in LCO 3.8.1.1 shall be demonstrated operable by Surveillance Requirement (SR) 4.8.1.1.1.a within one hour, and at least once per eight hours thereafter, and by SR 4.8.1.1.2.a.4 within 24 hours.

*Date of issuance:* March 19, 1990
*Effective date:* March 19, 1990
*Amendment Nos.:* 132, 119
*Facility Operating Licenses Nos. DPR-77 and DPR-79.* Amendments revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** January 24, 1990 (55 FR 2447). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 19, 1990
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

**Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri**

*Date of application for amendment:* November 14, 1989
*Brief description of amendment:* The amendment revised TS Section 4.0.2 and its associated Bases to remove the 3.25 limit for surveillances as provided in Generic Letter 89-14.
*Date of issuance:* March 22, 1990
*Effective date:* March 22, 1990
*Amendment No.:* 52
*Facility Operating License No. NPF-30.* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** January 24, 1990 (55 FR 2448). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 22, 1990.
*No significant hazards consideration comments received:* No.
*Local Public Document Room location:* Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

**Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin**

*Date of application for amendment:* January 29, 1990
*Brief description of amendment:* The amendment decreases the refueling shutdown margin from greater than or equal to 10% delta K/K to greater than or equal to 5% delta K/K.
*Date of issuance:* March 19, 1990
*Effective date:* March 19, 1990
*Amendment No.:* 85
*Facility Operating License No. NPF-30.* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** February 15, 1990 (55 FR 5526). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 19, 1990.
*No significant hazards consideration comments received:* No.
*Local Public Document Room location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

**Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts**

*Date of application for amendment:* January 18, 1990
*Brief description of amendment:* Incorporates into the Technical Specifications Modifications to allow the licensee to make certain changes in the Emergency Core Cooling System (ECCS).
*Date of issuance:* March 19, 1990
*Effective date:* August 1, 1990
*Amendment No.:* 131
*Facility Operating License No. DPR-28:* Amendment revised the Technical Specifications.
*Date of initial notice in* **Federal Register:** February 7, 1990 (55 FR 4290). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 19, 1990.
*No significant hazards consideration comments received:* No
*Local Public Document Room location:* Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

## 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 May 4, 1990, 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. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved.

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. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. 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 Services 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).

**Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon**

*Date of application for amendment:* December 27, 1989

*Brief description of amendment:* The amendment is a temporary change to the Trojan Technical Specifications that will permit opening the outside air makeup dampers for the normal and/or emergency control room ventilation system for up to one hour provided appropriate compensatory

measurements are taken to mitigate the consequences of a chlorine gas accident.

*Date of Issuance:* March 23, 1990

*Effective date:* December 28, 1989

*Amendment No.:* 158

*Facility Operating License No. NPF-1:* Amendment revised the Technical Specifications.

*Public comments requested as to proposed no significant hazards considerations:* No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated March 23, 1990.

*Attorney for licensee:* Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

*Local Public Document Room location:* Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207.

*NRC Project Director:* Charles M. Trammell, III, Acting

Dated at Rockville, Maryland, this 28th day of March 1990.

For the Nuclear Regulatory Commission

**Steven A. Varga,**

*Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation*

[FR Doc. 90-7611 Filed 4-3-90; 8:45 am]

BILLING CODE 7590-01-D

## Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the Office of Management and Budget review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension.
2. The title of the information collection: 10 CFR part 31—General Domestic Licenses for byproduct Material.
3. The form number if applicable: Not applicable.
4. How often the collection is required: Reports are submitted as events occur. Registration Certificates may be submitted at any time. Changes to the information on the Registration Certificate are submitted as they occur.
5. Who will be required or asked to report: Persons desiring to own byproduct material and persons desiring to possess byproduct material in certain items.
6. An estimate of the number of responses: 653.
7. An estimate of the total number of hours needed to complete the requirement or request: An average of 0.46 hours per response and 0.1 hours annually per recordkeeper. The total annual industry burden is estimated to be 799 hours.
8. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.
9. Abstract: 10 CFR part 31 establishes general licenses for the possession and use of byproduct material in certain items and a general license for ownership of byproduct material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150-0016, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance officer is Brenda J. Shelton, (301) 492-8132. Dated at Bethesda, Maryland, this 27th day of March 1990.

For the Nuclear Regulatory Commission.

**Joyce A. Amenta,**

*Designated Senior Official for Information Resources Management.*

[FR Doc. 90-7734 Filed 4-3-90; 8:45 am]

BILLING CODE 7590-01-M

**[Docket No. 50-294]**

## Environmental Assessment and Finding of no Significant Impact Regarding Termination of Facility License No. R-114, Michigan State University Triga Nuclear Reactor

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Order terminating Facility License No. R-114 for the Michigan State University (MSU or licensee) TRIGA Nuclear Reactor located in East Lansing, Michigan, in accordance with the application dated January 20, 1989, as supplemented on May 4, 1989.

### Environmental Assessment

*Identification of Proposed Action:* By application dated January 20, 1989 as supplemented, the MSU requested authorization to decontaminate and dismantle its TRIGA Nuclear Reactor Facility, to dispose of its component parts in accordance with the proposed decommissioning plan, and to terminate Facility License No. R-114. Following an "Order Authorizing Dismantling of Facility and Disposition of Component Parts," dated July 11, 1989, the MSU completed the dismantlement and submitted a final survey report on November 6, 1989. Representatives of the Oak Ridge Associated Universities, (ORAU), under contract to NRC, conducted a survey of the facility on December 18, 1989. The survey is documented in an ORAU report "Confirmatory Radiological Survey of the TRIGA Reactor Facility Michigan State University, East Lansing," J.D. Berger, February 1990. Region III, in a memorandum dated March 13, 1990, found that the ORAU report findings support the date developed in the licensee's final survey report.

*Need for Proposed Action:* In order to release the facility for unrestricted access and use, Facility License No. R-114 must be terminated.

*Environmental Impact of License Termination:* The Michigan State Univeristy indicates that the residual contamination and does exposures comply with the criteria of Regulatory Guide 1.86, Table 1, which establishes acceptable residual surface contamination levels, and the exposure limit, established by the NRC staff, of 5 micro R/hr above ground at one meter. These measurements have been verified by the NRC. The NRC finds that since these criteria have been met there is no significant impact on the environment and the facility can be released for unrestricted use.

*Alternatives to the Proposed Action:* Since the reactor and component parts have been dismantled and disposed of in accordance with NRC regulations and guidelines, there is no alternative to termination of Facility License No. R-114.

*Agecies and Persons Consulted:* Personnel from the Radiological Site Assessment Program, Oak Ridge Associated Universities (an NRC contractor) assisted Region III in the conduct of the Termination Survey for the Michigan State University TRIGA Nuclear Reactor Facility.

### Finding of no Significant Impact

The NRC has determined not to prepare an Environmental Impact Statement for the proposed action. Based on the foregoing Environmental Assessment, the NRC has concluded that the issuance of the Order will not

have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the application for termination of Facility License No. R–114, dated January 20, 1989, as supplemented. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland this 29th day of March 1990.

For the Nuclear Regulatory Commission.

**Seymour H. Weiss,**

*Director, Non-Power Reactor, Decommissioning and Enviromental Project Directorate, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 90–7736 Filed 4–3–90; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket Nos. 50–498 and 50–499]**

## Consideration of Issuance of Amendment to Facility Operating Licenses and Opportunity for Hearing; Houston Lighting & Power Co. et al.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–76 and NPF–80, issued to Houston Lighting & Power Company (the licensee), for operation of the South Texas Project, Units 1 and 2 located Matagorda County, Texas.

The amendments would change the technical specifications to allow the use of fuel enrichments up to 4.5 weight percent U–235. The present maximum enrichment allowed is 3.5 weight percent.

Prior to 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.

By May 3, 1990, 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 request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local Public Document Room located at Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488 and Austin Public Library, 810 Guadelupe Street, Austin, Texas 78701. 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 interevene. 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 schedule 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. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. in addition, the petition shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene 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 addresed to Frederick J. Hebdon: 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 General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street NW., Washington, DC 20036, 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 the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if its publishes a further notice for public comment of its proposed fundings of no significant hazards considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated March 1, 1990, which is available for public inspection at the

Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78801.

Dated at Rockville, Maryland, this 23rd day of March 1990.

For the Nuclear Regulatory Commission.

**Frederick J. Hebdon,**

*Director Project Directorate IV, Division of Reactor Projects—III, IV, V, and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 90–7735 Filed 4–3–90; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 600–25; Release No. 27858]**

March 28, 1990

### Participants Trust Co.; Registration as a Clearing Agency

In the matter of the Registration as a Clearing Agency of the Participants Trust Company. Notice of Filing and Order Granting Accelerated Approval of Registration Until March 31, 1991.

On October 3, 1988, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") an application for registration as a clearing agency under section 17A of the Securities Exchange Act of 1934 ("Act"). Notice of the application appeared in the **Federal Register** on November 15, 1988.[1] On March 28, 1989, the Commission granted the Participants Trust Company temporary registration as a clearing agency pursuant to sections 17A and 19(a)(1) of the Act, and Rule 17Ab2–1 thereunder for a period of 12 months.[2] On March 19, 1990, PTC filed an amendment to its application requesting that the Commission extend PTC's registration as a clearing agency until March 31, 1991.[3] This order approves the proposal on a temporary basis through March 31, 1991.

As discusssed in detail in the order granting PTC's registration, one of the primary reasons for PTC's registration was to develop depository facilities for mortgage-backed securities, particularly, securities guaranteed by the Government National Mortgage Association ("GNMA").[4] In connection with PTC's registration, PTC undertook to consider and implement several operational and procedural changes.[5] Although PTC has made progress toward complying with those conditions of registration, PTC has not satisfied all of those conditions. Accordingly, PTC has requested that the Commission extend PTC's registration as a clearing agency until March 31, 1991, to permit PTC to satisfy those conditions and to expand its systems, services, and related controls.[6]

PTC has functioned as a registered clearing agency for the past 12 months. PTC, by expanding its services and capacity, has facilitated the prompt and accurate clearance and settlement of mortgage-backed securities. In addition, the Commission believes that PTC continues to meet the determinations enumerated in section 17A(b)(3). Thus, the Commission believes that "good cause" exists, pursuant to Section 19(a) of the Act, for approving PTC's registration as a clearing agency prior to the thirtieth day after the date of publication of the notice in the **Federal Register.**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application within 30 days of the date of publication of this notice in the **Federal Register.** Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File Number 600–25. Copies of the application and all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

*It is therefore ordered,* that PTC's temporary registration as a clearing agency be, and hereby is, extended until March 31, 1991, subject to the terms, undertakings, and conditions specified in Securities Exchange Act Release No. 26671.[7]

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90–7724 Filed 4–3–90; 8:45 am]

BILLING CODE 8010–01–M

**[Rel. No. IC–17402; 812–7244]**

### Vanguard Explorer Fund, Inc., et al.; Notice of Application

March 28, 1990.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("Act").

**APPLICANTS:** Vanguard Explorer Fund, Inc.; Vanguard Small Capitalization Stock Fund, Inc.; W.L. Morgan Growth Fund, Inc.; PRIMECAP Fund, Inc.; Vanguard Specialized Portfolios, Inc.; Vanguard World Fund, Inc.; The Windsor Funds, Inc.; Gemini II, Inc.; Vanguard Index Trust; Vanguard Quantitative Portfolios, Inc.; Trustees' Commingled Fund; Vanguard Equity Income Fund, Inc.; Vanguard Asset Allocation Fund; Wellington Fund, Inc.; Vanguard Convertible Securities Fund, Inc.; Vanguard Fixed Income Securities Fund, Inc.; Wellesley Income Fund, Inc.; Vanguard High Yield Stock Fund, Inc.; Vanguard Preferred Stock Fund; Vanguard Adjustable Rate Preferred Stock Fund; any other investment company or portfolio thereof, which, as a member of the Vanguard Group of Investment Companies, receives virtually all of its corporate management, administrative and distribution services from The Vanguard Group, Inc., and which in the future proposes to make investments in equity and convertible debt securities of foreign securities companies (the "Funds"); and The Vanguard Group, Inc. ("Vanguard").

**RELEVANT ACT SECTIONS:** Exemption requested under section 6(c) from the provisions of section 12(d)(3) and Rule 12d3–1.

**SUMMARY OF APPLICATION:** Applicants seek a conditional order permitting the Funds to invest in equity and

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[1] *See* Securities Exchange Act Release No. 26265 (November 8, 1988), 53 FR 46008 and Securities Exchange Release Act No. 26457 (January 12, 1989), 54 FR 2251 (January 19, 1989), which amended PTC's application.

[2] *See* Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266.

[3] *See* letter from John J. Sceppa, President and CEO, PTC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission, dated March 19 1990.

[4] PTC expects all GNMA securities to be depository eligible by the end of 1990.

[5] *See* note 2, *supra.* Among other things, PTC undertook to establish back-up facilities for its operations and to review its rules and operating procedures for consistency with its actual operations and relationships.

[6] *See* note 3, *supra.*

[7] *See* note 2, *supra.*

convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser ("foreign securities companies") in accordance with the conditions of the proposed amendments to Rule 12d3–1.

**FILING DATE:** The application was filed on January 30, 1989, and was amended on November 7, 1989 and March 19, 1990.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 23, 1990, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Vanguard Financial Center, Valley Forge, Pennsylvania 19482.

**FOR FURTHER INFORMATION CONTACT:** Sheryl Siman Maliken, Staff Attorney, at (202) 272–2190, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

### Applicants' Representations

1. Each of the Funds is registered as a management investment company under the Act. Vanguard provides corporate management, administrative, transfer agency, and distribution services to the Funds and provides investment advisory services to some of the Funds. Vanguard is registered as an investment adviser under the Investment Advisers Act of 1940, and as a transfer agent under the Securities Exchange Act of 1934.

2. Applicants seek to diversify their portfolios further by being permitted to invest in foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser.

3. Applicants seek relief from section 12(d)(3) of the Act and Rule 12d3–1 thereunder to invest in securities of foreign securities companies to the extent allowed in the proposed amendments to Rule 12d3–1. *See* Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Proposed amended Rule 12d3–1 would, among other things, facilitate the acquisition by the Funds of equity securities issued by foreign securities companies. Applicants' proposed acquisitions of securities issued by foreign securities companies will satisfy each of the requirements of proposed amended Rule 12d3–1.

### Applicants' Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, a dealer, an underwriter, or investment adviser. Rule 12d3–1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Applicants' proposed acquisitions of securities issued by foreign securities companies will comply with all of the provisions of current Rule 12d3–1, except Subparagraph (b)(4) thereof. Subparagraph (b)(4) of Rule 12d3–1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since a "margin security" generally must be one which is traded in the United States markets, securities issued by many foreign securities firms would not meet this test. Accordingly, the Applicants seek an exemption only from the "margin security" requirements of Rule 12d3–1.

2. Proposed amended Rule 12d3–1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

### Applicant's Condition

Applicants agree to the following condition in connection with the relief requested:

The Applicants will comply with the proposed amendments to Rule 12d3–1 (Investment Company Act Release No. 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)) as they are currently proposed, and as they may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90–7678 Filed 4–3–90; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

### The U.S. Organization for the International Telegraph & Telephone Consultative Committee (CCITT); National Committee and Study Group A; Meeting

The Department of State announces that the National Committee for the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) and Study Group A, will meet on April 11, 1990 in room 1105, Department of State, 2201 C Street NW., Washington, DC. The United States CCITT National Committee meeting will meet from 9:30 a.m. to 12:30 p.m.; with Study Group A meeting at the same venue from 1:30 p.m. to 5 p.m.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the International Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCITT which are submitted to the Committee for consideration.

Study Group A deals with international telecommunications policy and services.

The meetings will include the following issues:

*USNC* Reports of the Strategic Policy Group's various task groups; a debrief of the interregional standard-setting meeting—Fredericksburg; update on HLC activities and task group; a

debrief of February ad hoc meeting for Resolution 18

U.S. Study Group A—Nominees for Study Group III delegation (May 14–June 1); review of SG III contributions; nominees for PTC–1 delegation; decision on SG IX accelerated approvals; debrief of February meeting of Study Group I; preparation for June 12–22 Meeting of Study Group II; preparation for ad hoc Resolution 18 activities including electronic data handling session (June 25–27 meeting) and September 10–14 full session.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members is only limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Please take notice that entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should please so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 647–5220. All attendees must use the C entrance to the building.

Dated: March 13, 1990.

**Earl S. Barbely,**

*Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.*

[FR Doc. 90–7716 Filed 4–3–90; 8:45 am]

BILLING CODE 4710–07–M

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**[Public Notice 1182]**

## South African Parastatal Organizations; Receipt of Request to Review Classification

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** A Request has been received to review whether the South Africa Iron and Steel Industrial Corp. (aka Iscor Limited) should be classified as a South African "parastatal organization" for purposes of the Comprehensive Anti-Apartheid Act of 1986, as amended (Pub. L. 99–440).

**DATES:** Comments must be received no later than May 1, 1990.

**ADDRESSES:** Comments should be sent to the Office of Southern African Affairs, room 4238, Department of State, Washington, DC 20520.

**FOR FURTHER INFORMATION CONTACT:** Tom Niblock, Office of Southern African Affairs (202) 647–8433; or Tony Perez, Office of the Legal Advisor, (202) 647–4110, Department of State.

**SUPPLEMENTARY INFORMATION:** State Department Public Notice No. 983, published on November 19, 1986 (51 FR 41912), listed South African firms which had been deemed to be "parastatal organizations" for purposes of the Comprehensive Anti-Apartheid Act of 1986. The notice provided that any person believing that, due to unique circumstances, a firm should be included or excluded from the list of parastatal organizations can request that the Department review the particular case. The notice stipulated that the Department of State may invoke the authorities set forth in section 603(b) of the Act in conducting a review. Any person who willfully makes a false or misleading statement in a submission to the Department will be subject to the civil and criminal penalties set forth in section 603 (b) and (c) of the Act and 18 U.S.C. 1001. In State Department Public Notice No. 1007, published on March 27, 1987 (52 FR 9982), the Department gave notice of a revised list of corporations, partnerships, and entities deemed to be "parastatal organizations" for purposes of the Comprehensive Anti-Apartheid Act of 1986.

A request has been submitted to the Department to review whether the South Africa Iron and Steel Industrial Corp. (aka ISCOR Limited) should be removed from the list of parastatal organizations maintained by the Department of State. ISCOR Limited, including its subsidiaries, was on the original list of parastatal organizations contained in Public Notice No. 983 and on the revised list in Public Notice No. 1001.

Interested persons are invited to submit any written comments relevant to the Department's review of the status of ISCOR Limited by May 1, 1990.

Dated: March 13, 1990.

**Herman J. Cohen,**

*Assistant Secretary for African Affairs.*

[FR Doc. 90–7657 Filed 4–3–90; 8:45 am]

BILLING CODE 4710–08–M

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## DEPARTMENT OF TRANSPORTATION

**[Docket 46701]**

## United States-Japan All-Cargo Service Case; Hearing

The hearing in this matter will run for consecutive days beginning on April 23, 1990 at 10 a.m. in room 5332 of the U.S. Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC.

**Burton S. Kolko,**

*Administrative Law Judge.*

[FR Doc. 90–7681 Filed 4–3–90; 8:45 am]

BILLING CODE 4910–62–M

## Federal Aviation Administration

## Noise Exposure Map Notice and Receipt of Noise Compatibility Program and Request for Review

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Colorado Springs Municipal Airport (COS) under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing proposed noise compatibility program that was submitted for Colorado Springs Municipal Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before September 19, 1990.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the Colorado Springs Municipal Airport noise exposure maps and the start of its reveiw of the associated noise compatibility program is March 23, 1990. The public comment period ends April 27, 1990.

**FOR FURTHER INFORMATION CONTACT:** Dennis Ossenkop, FAA, Airports Division, ANM–611, 17900 Pacific Hwy S., C–68966, Seattle, WA 98168. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps for Colorado Springs Municipal Airport are in compliance with applicable requirements of part 150, effective March 23, 1990. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before September 19, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act

requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Director of Aviation for Colorado Springs Municipal Airport submitted to the FAA noise exposure maps, descriptions and other documentation which were produced during an airport Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by COS. The specific maps under consideration are Figures 4.1 and 4.2 in the submission. The FAA has determined that these maps for Colorado Springs Municipal Airport are in compliance with applicable requirements. This determination is effective on March 23, 1990. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for COS, also effective on March 23, 1990. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 19, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue, SW., Room 615, Washington, DC.

Federal Aviation Administration, Airports Division, ANM–600, 17900 Pacific Hwy S., C–68966, Seattle, Washington 98168

Colorado Springs Municipal Airport, Colorado Springs

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Seattle, Washington, March 23, 1990.

**Edward G. Tatum,**

*Manager, Airports Division, ANM–600, Northwest Mountain Region.*

[FR Doc. 90–7697 Filed 4–3–90; 8:45 am]

BILLING CODE 4910–13–M

## National Highway Traffic Safety Administration

**[Docket No. 90–01–IP–NO2]**

## Bridgestone (U.S.A.), Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Bridgestone (U.S.A.) Inc. (Bridgestone), of Nashville, Tennessee, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.109, Federal Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires." The basis of this petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on January 31, 1990, and an opportunity afforded for comment (55 FR 3297).

Paragraph S4.3.4(b) of Standard No. 109 requires that "Each marking of the tire's maximum load rating pursuant to S4.3(c) in kilograms shall be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole number." During the period October 3, 1989, through December 11, 1989, Bridgestone manufactured and shipped 1,300 tires Model S402BZ, size P175/70R13, which bear the correct labeling information, conforming to all the requirements of Standard No. 109, however, the parenthetical 1036 PSI as shown below should be 1036 LBS: "MAX LOAD 470 kg (1036 PSI), @240 kPa (35 PSI) MAX PRESS."

The correct marking should be: "MAX LOAD 470 kg (1036 LBS), @240 kPa (35 PSI) MAX PRESS."

Bridgestone supported its petition with the following:

(1) On both sidewalls of the tire, the correct maximum load for the tire is clearly marked in kilograms. The noncomplying information is expressed as a parenthetical to the primary maximum load information.

(2) Completely correct complying information is clearly labeled on the outboard "face" side of the tire.

(3) The technically noncomplying marking is on the inboard side of the tire.

(4) On both sides of the tire, the correct maximum inflation pressure is clearly marked. Additionally, safety warnings printed on both sidewalls of the tire clearly refer the user to the owner's manual or vehicle placard for correct inflation pressures.

(5) Even when viewed in the most unfavorable light, the technically noncomplying information ("1036 PSI") is at most a nonsequitur (sic) in the context of the "maximum load" line of information.

(6) The technically noncomplying information is inconsequential as it relates to motor vehicle safety because it is impossible to inflate a tire to more than a small fraction of 1036 psi with commercially available inflation equipment.

(7) Most importantly, the technically noncomplying marking will have no effect on the performance or safety of the tire.

No comments were received on the petition.

Petitioner has argued that "completely correct complying information is clearly labeled on the outboard 'face' side of the tire," and that "The technically noncomplying marking is on the inboard side of the tire." However, the petitioner did not specify that the tires had white sidewalls. Only white sidewall tires may be said to have outboard and inboard sides; both faces of black sidewall tires are identical, and either may be the outboard side. The agency must therefore assume that the affected tires have black sidewalls.

Assuming that the noncomplying side will be mounted outboard, a person reading the sidewall will note two values expressed in psi. The maximum inflation pressure is 35 psi, and the maximum load is 1036 psi. NHTSA believes that 1036 psi is so much higher than the maximum pressure capability of any motor vehicle tire that a reader would be skeptical of its validity, and choose 35 psi. (Bridgestone argued that it is impossible to inflate a tire to more than a small fraction of 1036 psi with commercially available inflation equipment. However, many air compressors are capable of inflating the noncomplying tire to as high as four times its correct recommended maximum pressure, and inflating a tire to this level could affect motor vehicle safety).

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: March 30, 1990.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 90–7730 Filed 4–3–90; 8:45 am]

BILLING CODE 4910–59–M

## DEPARTMENT OF THE TREASURY

### Customs Service

**[T.D. 90–27]**

### Approval of Chamberlain & Associates as a Commercial Gauger

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of Approval of Chamberlain & Associates, Incorporated, as a Commercial Gauger.

**SUMMARY:** Chamberlain & Associates of Deer Park, Texas, recently applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals, and vegetable and animal oils under part 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Chamberlain & Associates meets all of the requirements for approval as a commercial gauger.

Therefore, in accordance with part 151.13(f) of the Customs Regulations, Chamberlain & Associates, 1417 Roosevelt, P.O. Box 752, Deer Park, Texas 77536, is approved to gauge the products named above in all Customs districts.

**EFFECTIVE DATE:** March 28, 1990.

**FOR FURTHER INFORMATION CONTACT:** Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–2446).

Dated: March 28, 1990.

**John B. O'Loughlin,**

*Director, Office of Laboratories and Scientific Services.*

[FR Doc. 90–7643 Filed 4–3–90; 8:45 am]

BILLING CODE 4820–02–M

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Russian Glass of the 17th–20th Centuries" (see list [1], imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the lsited exhibit objects at the Corning Museum of Glass at One Museum Way, Corning, New York beginning on April 20, 1990 to on or about October 14, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: April 2, 1990.

**Alberto J. Mora,**

*General Counsel.*

[FR Doc. 90–7905 Filed 4–3–90;8:45am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/485–8827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

# Sunshine Act Meetings

Federal Register
Vol. 55, No. 65
Wednesday, April 4, 1990

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).

**COMMISSION ON CIVIL RIGHTS**

**DATE AND TIME:** Monday, April 9, 1990, 9:30 a.m. to 1:00 p.m.

**PLACE:** 1121 Vermont Avenue NW., Room 512, Washington, DC 20425.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:**

I. Approval of Agenda
II. Approval of Minutes of March Meeting
III. Announcements (Calendar for September-December)
IV. SAC Reports and Appointments
*Efforts to Promote Housing Integration in Atrium Village and South Suburbs* (Illinois)
*Bigotry and Violence on Missouri's College Campuses*
*Bigotry and Violence on Nebraska's College Campuses*
*Housing and Utility Rate Issues on Reservations in North Dakota*
*Reporting on Bias-Related Incident in Pennsylvania*
*Implementing the 1988 Fair Housing Amendments Act* (Pennsylvania)
*Bigotry and Violence in Rhode Island*
*Early Childhood Education Issues in Texas: Implications for Civil Rights*
Kentucky and Wisconsin SAC Appointments
V. Commission Subcommittee Reports
VI. Staff Director's Report
VII. Future Agenda Items

**CONTACT PERSON FOR FURTHER INFORMATION:** Barbara Brooks, Press and Communications Division, (202) 376–8312.

**William J. Howard,**
*General Counsel.*

[FR Doc. 90–7860 Filed 4–2–90; 12:12 pm]

**BILLING CODE 6335–01–M**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of a Matter To Be Withdrawn From Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the "discussion agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, April 3, 1990, in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street NW., Washington, DC:

Memorandum and resolution re: Regulation implementing 12 U.S.C. § 1823(k) relating to the override of state laws.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: March 30, 1990.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**
*Executive Secretary.*

[FR Doc. 90–7883 Filed 4–2–90; 1:42 pm]

**BILLING CODE 6714–01–M**

**FEDERAL TRADE COMMISSION**

**TIME AND DATE:** 10:00 a.m., Wednesday, April 4, 1990.

**PLACE:** Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

**STATUS:** Open.

**MATTER TO BE CONSIDERED:** Consideration of whether to Retain, Amend or Repeal Quick Freeze Aerosol Spray Trade Regulation Rule.

**CONTACT PERSON FOR MORE INFORMATION:** Susan B. Ticknor, Office of Public Affairs: (202) 326–2179, Recorded Message: (202) 326–2711.

**Donald S. Clark,**
*Secretary.*

[FR Doc. 90–7814 Filed 4–2–90; 8:45 am]

**BILLING CODE 6750–01–M**

federal register

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Part II

# Department of Housing and Urban Development

## Office of the Secretary

## Exclusions of Census Taker Income From the Definition of "Annual Income" in HUD's Assisted Housing Programs; Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

[Docket No. N-90-3049; FR-2796-N-01]

### Exclusions of Census Taker Income From the Definition of "Annual Income" in HUD's Assisted Housing Programs

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

**ACTION:** Notice.

**SUMMARY:** Regulations governing the Rent Supplement, section 236, section 8 and the Public and Indian Housing programs, mandate that income which is of a temporary, nonrecurring, or sporadic nature be excluded from the definition of "annual income". To encourage participation by residents of HUD's assisted housing programs in the Census of 1990, the Department is announcing that monies earned as official census takers will be excluded from income for determination of eligibility or benefits under these assisted housing programs.

**DATES:** Effective Date: April 4, 1990.

**FOR FURTHER INFORMATION CONTACT:** For Rent Supplement, section 236, and section 8 programs administered under 24 CFR parts 880, 881 and 883 through 886: James J. Tahash, Director, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street Washington, DC 20410, telephone-Voice: (202) 426–3944, TDD: (202) 755–3938.

Paul Fletcher, Special Assistant for Economic Development and Supportive Services, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street Washington, DC 20410, telephone (202) 755–4214.

For section 8 programs administered under 24 CFR part 882 (Existing Housing, Moderate Rehabilitation) and under part 887 (Vouchers), and for the Public and Indian Housing programs: Edward Whipple, Chief, Rental and Occupancy Branch, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone-Voice: (202) 426–0744, TDD: (202) 245–0850. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** Temporary, nonrecurring or sporadic income is excluded from the definition of "annual income" used to determine eligibility and rent payment under the above mentioned programs (24 CFR part 215.21(c)(9); 236.3(c)(9); 813.106(c)(9); 913.106(c)(9)).

The Bureau of the Census prefers to recruit census takers from the areas where it will be discharging its duties and has, in the past experienced difficulty in recruiting workers from low-income areas. To encourage participation by these preferred recruits and to help the Bureau in discharging its important duties, HUD has determined that the income earned as census takers during this short period qualified under the "temporary, nonrecurring or sporadic income" exclusion, and, therefore, must not be considered as "annual income" for purposes of these programs. This exclusion is temporary and will last so long as the takers are discharging their official duties. HUD expects this exclusion to last between April 1, 1990 and August 31, 1990.

In the event that any PHA has counted the earnings of Census takers as income for the purposes of determining rent, it shall refund any excess rent payments to the individual or family no later than 90 days from the effective date of this Notice. Any individual or family whose eligibility was denied because of this excluded income must be given the opportunity to reapply.

Dated: March 27, 1990.

**Jack Kemp,**

*Secretary.*

[FR Doc. 90–7648 Filed 4–3–90; 8:45 am]

BILLING CODE 4210–32–M

federal register

Wednesday
April 4, 1990

Part III

# Department of the Interior

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Parts 723 and 845

## Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Civil Penalties; Proposed Rule

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 723 and 845**

**RIN 1029-AB22**

## Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Civil Penalties

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposes to revise its Initial and Permanent Regulatory Program rules governing the assessment of civil penalties under section 518 of the Surface Mining Control and Reclamation Act of 1977. The revision will increase the amount of time within which OSM may hold an assessment conference.

**DATES:** *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on May 21, 1990.

*Public Hearings:* Upon request, OSM will hold public hearings on the proposed rule in Washington, DC; Denver, Colorado; and, Knoxville, Tennessee on May 14, 1990 at 9:30 a.m. Upon request, OSM will also hold public hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington, where Federal regulatory programs are in effect, at times and on dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5:00 p.m. Eastern time on April 25, 1990. Individuals wishing to attend but not testify at any hearing should contact the person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that the hearing will be held.

**ADDRESSES:** *Written Comments:* Hand-deliver to the Office of Surface Mining, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC; or mail to the Office of Surface Mining, Administrative Record, Room 5131-L, 1951 Constitution Avenue, Washington, DC 20240.

*Public Hearings:* If public hearings are held in Washington, DC, Denver, Colorado, or Knoxville, Tennessee (see **DATES:** *Public Hearings*), such hearings will be held at the Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt Hotel, 500 Hill Avenue SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington will be announced prior to the hearings.

*Request for public hearings:* Submit orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT"** by the time specified under **"DATES."**

**FOR FURTHER INFORMATION CONTACT:** Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-5150 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:**

I. Public Comment Procedures
II. Discussion of the Proposed Rule
III. Procedural Matters

### I. Public Comment Procedures

*Written Comments*

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments. Comments received after the close of the comment period (see **"DATES"**) or delivered to an address other than those listed above (see **"ADDRESSES"**) may not be considered or included in the Administrative Record for the final rule.

*Public Hearings*

OSM will hold public hearings on the proposed rule by request only. The times, dates and addresses scheduled for hearings at three locations are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). The times, dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at those locations.

Any person interested in participating at a hearing at a particular location should inform Mr. DeVito (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing of the desired hearing location by 5:00 p.m. Eastern time on April 25, 1990. If no one has contacted Mr. DeVito to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and to ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advance copy of their testimony.

### II. Discussion of the Proposed Rule

*Background*

Section 518 of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, authorizes the Secretary of the Interior to assess civil penalties for violations of the Act. The regulations governing the assessment of civil penalties are found at 30 CFR parts 723 and 845. Part 723 contains the Initial Program regulations which were first promulgated on December 13, 1977 (42 FR 62702), and subsequently revised on September 4, 1980 (45 FR 58780), and February 8, 1988 (53 FR 3664). Part 845 contains the Permanent Program regulations which were first promulgated on March 13, 1979 (44 FR 15461), and subsequently revised on August 16, 1982 (47 FR 35640), and February 8, 1988 (53 FR 3664). The provisions of each part are substantively identical except that § 845.21 does not have a counterpart in part 723.

Sections 723.18 and 845.18 of the regulations govern the procedures for an assessment conference. When a violation of the Act occurs and a person is served with a notice of a proposed civil penalty assessment for the violation, the person may request an assessment conference during which OSM will reconsider the relevant information on the violation and the amount of the penalty. At the conclusion of an assessment conference, the proposed penalty assessment may be affirmed, raised, lowered, or vacated.

*Purpose of the Proposed Revision*

On February 8, 1988 (53 FR 3664), OSM revised both the Initial and Permanent Program regulations at 30 CFR 723.18(a) and 845.18(a). The revisions extended by approximately 18 days the amount of time within which a person could request an assessment conference to review a proposed civil penalty assessment. The time was extended from "15 days from the date the proposed assessment or

reassessment is mailed" to "30 days from the date the proposed assessment or reassessment is received." No comments were received when the proposed revisions were published in the **Federal Register** on December 24, 1986 (51 FR 46838), and they were later adopted as proposed.

At the time provisions in §§ 723.18(a) and 845.18(a) were revised, the provisions in §§ 723.18(b) and 845.18(b) were not. These later sections specify that when a conference is requested, it "shall be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later." As a result of the revisions to §§ 723.18(a) and 845.18(a), the amount of time allowed OSM to acknowledge the request for a conference, schedule the conference, and hold the conference was reduced from approximately 45 days to less than 30. OSM has found it difficult to carry out its administrative responsibilities in this reduced period of time because of the preparatory steps preceding an assessment conference.

These preparatory steps are as follows: When a request for an assessment conference is received, it is reviewed, the status of any concurrent appeals checked, and an approval letter issued, if appropriate. OSM's computer tracking system must then be coded to reflect the request. The request is then assigned to an assessment conference officer who must review the case in detail and conduct the necessary research and coordination to obtain copies of all documents pertinent to the case. These activities can take from one to two weeks depending principally on the availability of documents.

When these steps are completed, the assessment conference officer contacts the operator to schedule the conference at the operator's convenience. Many times the operator is not prepared to present his evidence on short notice. Operators frequently request 2 weeks advance notice of the conference date since they may have attorneys or consultants who will attend.

When the conference has been scheduled, the assessment conference officer is required to post notice of the time and place of the conference at the State or field office closest to the mine at least 5 days before the conference.

The current regulations do not provide adequate time to complete all of these preparatory steps. This rule will alleviate that problem by increasing the amount of time allowed to hold an assessment conference by approximately 30 days. The proposed rule specifies that the 60-day period within which the conference must be held will begin to run from the date the request for an assessment conference is received rather than from the date the assessment is issued. Since the person requesting the assessment conference is not required to prepay any proposed civil penalty assessment when the conference is requested, the extension on time will not result in any economic hardship for the person requesting the conference and will allow him more time to prepare for the conference.

*Effect of the Rule in Federal Program States and on Indian Lands*

The proposed revisions, if adopted, will apply through cross-referencing in the following States with Federal programs: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The proposed rule, if adopted, will also apply through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR part 750. Comments are specifically solicited as to whether unique conditions exist in any of these States or on Indian lands relating to this proposal which should be reflected either as changes to the national rules or as specific amendments to any or all of the Federal programs.

*Effect of the Rule in States With Primacy*

Section 518(i) of the Act and 30 CFR 840.13(c) of the regulations require approved State programs to contain civil penalty assessment procedures which are the same as or similar to the provisions of section 518 of the Act and consistent with those of 30 CFR part 845. The time allowed for holding an assessment conference is not prescribed in the Act and thus State programs would have to be consistent with, i.e., no less effective than the proposed rule. Because OSM allows the States reasonable latitude in establishing certain procedural time frames, States with programs which already contain approved procedures for holding an assessment conference would not necessarily need to adopt this change.

## III. Procedural Matters

*Federal Paperwork Reduction Act*

There are no information collection requirements in the proposed rule which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

*Executive Order 12291*

The Department of the Interior has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

*Regulatory Flexibility Act*

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule governs the scheduling of conferences to review a proposed civil penalty assessments under section 518 of the Act. The rule merely extends the time within which a conference may be held by approximately 30 days.

*National Environmental Policy Act*

OSM has prepared a draft environmental assessment, and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft environmental assessment is on file in the OSM Administrative Record at the address previously specified (see "**ADDRESSES**"). A final environmental assessment will be completed and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

*Author*

The author of this proposed rule is Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone (202) 343–5150 (Commercial of FTS).

**List of subjects**

*30 CFR Part 723*

Administrative practice and procedure, Penalties, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

*30 CFR Part 845*

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Surface Mining Reclamation and Enforcement Office, Underground mining.

Accordingly, it is proposed to amend 30 CFR parts 723 and 845 as set forth below:

Dated: March 5, 1990.

**James M. Hughes,**

*Deputy Assistant Secretary, Land and Minerals Management.*

**SUBCHAPTER B—INITIAL PROGRAM REGULATIONS**

**PART 723—CIVIL PENALTIES**

1. The authority citation for part 723 continues to read as follows:

**Authority:** Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 518 (30 U.S.C. 1211, 1251, 1268), unless otherwise noted; and Pub. L. 100–34.

2. Section 723.18(b)(1) is revised to read as follows:

**§ 723.18 Procedures for assessment conference.**

* * * * *

(b)(1) The Office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by section 554 of title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later.

* * * * *

**SUBCHAPTER L—PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES**

**PART 845—CIVIL PENALTIES**

1. The authority citation for part 845 continues to read as follows:

**Authority:** Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*); and Pub. L. 100–34.

2. Section 845.18(b)(1) is revised to read as follows.

**§ 845.18 Procedures for assessment conference.**

* * * * *

(b)(1) The Office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by section 554 of title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later, *Provided:* That a failure by the Office to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

* * * * *

[FR Doc. 90–7722 Filed 4–3–90; 8:45 am]

BILLING CODE 4310–05–M

# Reader Aids

**Federal Register**

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## INFORMATION AND ASSISTANCE

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**H.R. 3311/Pub. L. 101-259**

To designate the Federal building located at 350 South Main Street in Salt Lake City, Utah, as the "Frank E. Moss United States Courthouse". Mar. 30, 1990; 104 Stat. 121; 1 page) Price: $1.00

**S. 1091/Pub. L. 101-260**

United States Coast Guard Bicentennial Medal Act. (Mar. 30, 1990; 104 Stat. 122; 1 page) Price: $1.00

**S.J. Res. 229/Pub. L. 101-261**

To designate April 1990 as "National Prevent-A-Litter Month". (Mar. 30, 1990; 104 Stat. 123; 1 page) Price: $1.00

**S. 2231/Pub. L. 101-262**

Energy Policy and Conservation Act Extension Amendment of 1990. (Mar. 31, 1990; 104 Stat. 124; 1 page) Price: $1.00

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