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1–800–359–3997

WASHINGTON, DC

WHEN: September 30, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240

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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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegations of Authority by the Secretary of Agriculture and General Officers of the Department

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and the General Officers of the Department to delegate the authority of the Secretary of Agriculture under Executive Order No. 12088, concerning compliance with environmental laws at Federal facilities.

EFFECTIVE DATE: September 4, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas R. Fox, Office of the General Counsel, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250–1400; telephone (202) 447–2320.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order No. 12088, October 13, 1978 (43 FR 47077) and various Federal environmental statutes, including, but not limited to, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments (RCRA), 42 U.S.C. 6901, *et seq.*, the Federal Water Pollution Prevention and Control Act ("Clean Water Act"), as amended, 33 U.S.C. 1251, *et seq.*, the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*, the Noise Control Act of 1972, as amended, 42 U.S.C. 4901, *et seq.*, the Toxic Substances Control Act (TSCA), as amended, 15 U.S.C. 2601, *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, 7 U.S.C. 136, *et seq.*, the head of each Executive agency must assure compliance with pollution control standards at Federal facilities.

Pursuant to section 1–601 of Executive Order No. 12088, whenever the Administrator of the United States Environmental Protection Agency (EPA) or an appropriate State, interstate, or local agency notifies an Executive agency that a facility under its control is in violation of an applicable pollution control standard, the head of the Executive agency must consult promptly with the notifying agency and provide, for the approval of the notifying agency, a plan and schedule to achieve and maintain compliance with the applicable pollution control standard. When the notifying agency is the EPA, the head of the Executive agency may enter into an inter-agency agreement, known as a Federal Facility Compliance Agreement (FFCA), containing a plan and schedule to achieve and maintain compliance with the applicable pollution control standard for a Federal facility within the control of the agency. When the notifying agency is a State, interstate, or local agency, the head of the Executive agency may enter into an administrative consent order or a consent judgment in an appropriate United States District Court, containing a plan and schedule to achieve and maintain compliance with the applicable pollution control standard for a Federal facility within the control of the agency.

The delegations of authority of the Department of Agriculture are amended to delegate to the Assistant Secretary for Science and Education the authority vested in the Secretary of Agriculture by Executive Order No. 12088 to enter into a FFCA with the EPA or a consent order or consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule for compliance with the applicable pollution control standard with respect to those Federal facilities under the authority of the Assistant Secretary for Science and Education. Further, the authority vested in the Secretary by Executive Order No. 12088 to enter into a FFCA with EPA, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate or local agency, delegated to the Assistant Secretary for Science and Education, is delegated by the Assistant Secretary for Science and Education to the Administrator, Agricultural Research Service (ARS), with respect to Federal facilities under the authority of ARS.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication of the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, Public Law 96–354, and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, part 2, title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.30(h) is revised to read as follows:

§ 2.30 Delegations of authority to the Assistant Secretary for Science and Education.

* * * * *

(h) Related to compliance with environmental laws. With respect to facilities under his authority, to exercise the authority of the Secretary of Agriculture pursuant to Executive Order No. 12088, October 13, 1978 (43 FR 47077), to enter into an inter-agency agreement, known as a Federal Facility Compliance Agreement (FFCA), with the United States Environmental Protection Agency (EPA), or an administrative

consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards, including those established pursuant, but not limited, to the following:

(1) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments (RCRA), 42 U.S.C. 6901, *et seq.*

(2) Federal Water Pollution Prevention and Control Act ("Clean Water Act"), as amended, 33 U.S.C. 1251, *et seq.*

(3) Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

(4) Noise Control Act of 1972, as amended, 42 U.S.C. 4901, *et seq.*

(5) Toxic Substances Control Act (TSCA), as amended, 15 U.S.C. 2601, *et seq.*

(6) Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, 7 U.S.C. 136, *et seq.*

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education

3. The heading of § 2.106 and paragraph (a)(49) are amended to read as follows:

§ 2.106 Administrator, Agricultural Research Service.

(a) * * *

(49) *Related to compliance with environmental laws.* With respect to facilities under his authority, to exercise the authority of the Secretary of Agriculture pursuant to Executive Order No. 12088, October 13, 1978 (43 FR 47077), to enter into an inter-agency agreement, known as the Federal Facility Compliance Agreement (FFCA), with the United States Environmental Protection Agency (EPA), or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards, including those established pursuant, but not limited, to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments (RCRA), 42 U.S.C. 6901, *et seq.*

(ii) Federal Water Pollution Prevention and Control Act ("Clean Water Act"), as amended, 33 U.S.C. 1251, *et seq.*

(iii) Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

(iv) Noise Control Act of 1972, as amended, 42 U.S.C. 4901, *et seq.*

(v) Toxic Substances Control Act (TSCA), as amended, 15 U.S.C. 2601, *et seq.*

(vi) Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, 7 U.S.C. 136, *et seq.*

Done at Washington, DC, this 27th day of August, 1991.

Edward R. Madigan,

Secretary of Agriculture.

[FR Doc. 91–20980 Filed 9–3–91; 8:45 am]

BILLING CODE 3410–14–M

Agricultural Marketing Service

7 CFR Part 1007

[DA–91–015]

Milk in the Georgia Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action makes inoperative the requirement that producers be paid on the basis of a base and excess payment plan for the month of August 1991. The suspension was requested by a cooperative association because the current provisions tend to discourage milk production at a time when milk production is declining. Comments in opposition were received from several producers.

EFFECTIVE DATE: September 4, 1991.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–6274.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued July 11, 1991; published July 17, 1991 (56 FR 32159).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action will encourage milk production during the month of August which is a month of declining milk production.

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

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

Notice of proposed rulemaking was published in the **Federal Register** on July 17, 1991 (56 FR 32519) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Several producers filed comments in opposition to the suspension.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the month of August 1991 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1007.32, paragraph (a).
2. In § 1007.61 (a) the words "of September through January".
3. In § 1007.61, paragraph (b).

Statement of Consideration

This action makes inoperative the requirement that producers be paid on the basis of the base and excess plan for the month of August 1991. Dairymen, Inc. (DI), a cooperative association of producers having a substantial amount of milk pooled on the Georgia milk market, requested the suspension. The cooperative asked for the suspension in order to remove a conflict which currently exists between the order provisions and the need for additional milk in this market for the month of August.

DI stated that the current order provisions provide that producers be paid a base and excess price for the months of February through August. The cooperative said that this plan was designed to encourage milk production during the base-building months of September through January when a greater volume of milk is needed for fluid use, and to discourage additional production (excess milk) during the months of February through August when the additional milk production is not needed for fluid use.

DI stated that marketing conditions have changed since those provisions were adopted in the Georgia order. In

recent years, milk production during the month of August has been in short supply. DI believes that production should not be discouraged through the payment of the excess price for additional production during the month of August.

Interested parties were given an opportunity to submit written data, views, and arguments concerning the proposed suspension. Several producers filed comments in opposition to the suspension. The producers indicated that presumably the majority of producers would be producing less than their base in August and that, compared to the base price under the base and excess plan, the blend price is likely to be less if any producers are producing excess milk.

As indicated by proponent cooperative, the market is likely to be short of milk during August. In the recent past, supplemental milk supplies have been needed in the market during August. Accordingly, any milk production in excess of base milk is needed to serve the fluid Class I market, which is the highest price use of milk. In the absence of this suspension action, producers with excess milk would be encouraged to shift off the market in August and thereby detract from the basic function of the order in assuring an adequate supply of milk. In addition, the base plan, if continued in August, would tend to be an impediment to fluid milk handlers' ability to attract supplemental milk suppliers on a direct-shipped basis from producers in nearby markets. Under the plan such producers would be credited only with the excess price because of not having a base on this market.

This action should contribute to an increase in the amount of milk available for fluid use during August. As explained above, the market is likely to be short of fluid milk during that month. Suspending the base and excess plan provisions may very well result in a blend price which is lower than the base price, as indicated by the producers opposing this action. However, the needs of the market are such that it is appropriate to suspend the aforesaid provisions.

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

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that this action should make more milk available for fluid use in the market in August 1991.

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

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Several producers filed comments in opposition to the suspension.

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

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

It is therefore ordered, That the following provisions in § 1007.32(a), § 1007.61 (a) and (b) of the Georgia order are hereby suspended for August 1991.

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. The authority citation for 7 CFR part 1007 continues to read as follows:

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

§ 1007.32 [Suspended in part]

2. Suspended in part in § 1007.32, paragraph (a) is suspended.

§ 1007.61 [Suspended in part]

3. Suspended in part in § 1007.61(a) the following words: "of September through January" are suspended.

4. Suspended in part in § 1007.61, paragraph (b) is suspended.

Signed at Washington, DC on: August 26, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 91–20963 Filed 9–3–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90–ASW–43]

Revision of Transition Area: Farmington, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the 1,200-foot transition area located at Farmington, NM. This action is necessary to accommodate larger holding patterns required for larger and faster aircraft utilizing the Farmington Four Corners Regional Airport, and provides air traffic control with sufficient controlled airspace to provide radar vectors to arriving aircraft. In addition, this action includes minor revisions to the coordinates used to describe the airport and revise the airport name to the Farmington Four Corners Regional Airport. The effect of this action is to provide adequate controlled airspace for holding IFR aircraft, radar vectors for arriving aircraft, and revise the airport coordinates and name.

EFFECTIVE DATE: 0901 u.t.c., January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Mark F. Kennedy, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On November 7, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the 1,200-foot transition area located at Farmington NM (55 FR 49074).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The City of Farmington, NM, Airport Advisory Commission inquired as to the need to designate all of the areas between the arrival feeder fixes as controlled airspace. It is necessary to include the airspace between arrival feeder fixes in order to contain the protected airspace of each holding pattern. This will also allow air traffic control the flexibility to provide radar vectors between the arrival routes. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G, dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations will revise the 1,200-foot transition area located at Farmington, NM. The holding patterns at the arrival feeder fixes to the Farmington Four Corners Regional Airport have been expanded to accommodate larger and faster aircraft, which has made this action necessary. This action will expand the 1,200-foot transition area located at Farmington, NM, to contain the holding pattern

protected airspace within controlled airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Farmington, NM [Revised]

That airspace extending upward from 700 feet above the surface within an 11-mile radius of the Farmington Four Corners Regional Airport (latitude 36°44'31"N., longitude 108°13'45"W.) and within 3.5 miles each side of the Farmington VORTAC 086° radial extending from the 11-mile radius area to 12 miles east of the VORTAC and within 4.5 miles each side of the Farmington VORTAC 265° radial extending from the 11-mile radius area to 23 miles west of the VORTAC; and, that airspace extending upward from 1,200 feet above the surface bounded by a line extending from latitude 37°04'00"N., longitude 108°58'00"W.; to latitude 37°04'00"N., longitude 108°28'00"W.; thence clockwise within a 30-mile radius of the Farmington VORTAC to latitude 37°00'00"N., longitude 107°39'30"W.; to latitude 37°00'00"N., longitude 107°11'30"W.; thence clockwise within a 53-mile radius of the Farmington VORTAC to point of beginning; excluding that airspace within the Durango, CO, transition area, that airspace within and underlying the Crownpoint, NM, transition area, and that airspace within the State of Arizona.

Issued in Forth Worth, TX, on July 22, 1991.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 91–21094 Filed 9–3–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 93

[Docket No. 26339]

Operation of Jet Aircraft in Commuter Slots at O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Notice of meeting.

SUMMARY: On August 14, 1991, the FAA issued an amendment to the High Density Traffic Airport Rule that allows current holders of commuter slots at O'Hare International Airport to use up to 25% of their commuter slots for operations with aircraft having a certificated maximum passenger capacity of up to 110 seats. This notice announces a meeting to conduct a lottery to allocate commuter slot times at which an operator holding commuter slots may use those slots with the larger aircraft.

DATES: The meeting will be held on Thursday, September 5, 1991. The lottery will begin at 1:30 p.m.

ADDRESSES: The meeting will be held in Conference Room 3208–3A, 3rd Floor, 480 L'Enfant Plaza, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia R. Lane, Airspace and Air Traffic Law Branch, AGC–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–3491.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 267–8058. Communications must identify the notice number of the document.

Background

On December 16, 1985, the Department of Transportation issued Amendment No. 93–49, "High Density Traffic Airports; Slot Allocation and Transfer Methods; Final Rule" (50 FR 52180, December 20, 1985), adding new subpart S to part 93 of the Federal Aviation Regulations (FAR), 14 CFR part 93, subpart S. The rule established procedures for the allocation and transfer of operating slots at the four airports designated as high density traffic airports under the High Density Rule, 14 CFR part 93, subpart K: John F. Kennedy International, LaGuardia, O'Hare International, and Washington National Airports.

On August 14, 1991, the FAA issued an amendment to the High Density Traffic Airport Rule that allows current holders of commuter slots at O'Hare International Airport to use up to 25% of their commuter slots for operations with aircraft having a certificated maximum passenger capacity of up to 110 seats (56 FR 41200, August 19, 1991). The amendment limits the number of slots that can be used for such larger aircraft to six per half hour, not to exceed ten for any two consecutive half hours, during non-peak periods (0645 to 1014, 1245 to 1714, and 1945 to 2114 local time), and to two per half hour during peak periods (1015 through 1244 and 1715 through 1944).

Any carrier intending to operate a commuter slot with a 56- to 110-seat aircraft must have a gate available for each such operation without any planned waiting time.

Lottery Under Amendment No. 93–62

Purpose of Lottery

Amendment No. 93–62 provides that the holders of the commuter slots may designate which of their respective slots will be used for larger aircraft. Because the rule limits the number of operations per half hour for which larger aircraft may be substituted, a lottery will be held to allocate the available times to interested and eligible air transportation operators. The lottery will be conducted in accordance with general slot lottery procedures under 14 CFR 93.225. This notice announces a meeting to conduct lottery to allocate commuter slot times in which an operator holding commuter slots may use those slots with aircraft having a certificated maximum passenger seating capacity of up to 110 seats.

Time and Place

The lottery will be held in Conference Room 3208–3A, 3rd Floor, 480 L'Enfant Plaza, SW., Washington, DC, at 1:30 p.m. on September 5, 1991.

Eligibility

Because the lottery relates to the use of commuter slots already allocated, the lottery will be held only for operators that currently hold commuter slots at O'Hare International Airport. The current holders of the 435 commuter slots at O'Hare are American (AMR Eagle, Simmons) with 281 slots, Air Wisconsin with 118 slots, and Great Lakes Aviation with 36 slots.

To be eligible to participate in the lottery, an operator holding commuter slots at O'Hare must hold appropriate economic authority under title IV of the Federal Aviation Act of 1958, as amended. Also, because the operations permitted under the amended rule require a part 121 operations certificate, each participant must hold or have made substantial progress in obtaining FAA operating authority under part 121 of title 14 of the Code of Federal Regulations. "Substantial progress" for this purpose is defined in 14 CFR 93.225(g). Currently, American Airlines and Air Wisconsin hold FAA Part 121 certificates; Great Lakes Aviation holds a Part 135 certificate.

Lottery Procedures

Slot times will be allocated in accordance with the lottery procedures set forth in 14 CFR 93.225. The procedures for the lottery may be summarized as follows:

1. A random lottery will be held to determine the order in which eligible operators will select the slots in which they intend to operate aircraft with up to 110 seats.

2. Each eligible operator will make its selection in the order determined by the random draw.

3. For each selection sequence, an operator may select any two of the commuter slots it holds, subject to the half hour limitations on the number of operations with the larger aircraft having a maximum seating capacity of up to 110 passenger seats. After each operator has had an opportunity to select two slot times, the allocation sequence will be repeated in the same order.

4. Each operator must make its selection within 5 minutes after being called or it shall lose its turn. An operator's participation shall end when it has designated 25% of its commuter slots for operations with the larger aircraft of up to 110 passenger seats.

5. The lottery shall conclude when all eligible operators have designated all of their respective commuter slots that they intend to use for the larger aircraft of up to 110 seats, up to a maximum of 25% of the commuter slots they currently hold.

Public Process

The meeting is open to the public and all interested persons are invited to attend.

Issued in Washington, DC on August 29, 1991.

Kenneth P. Quinn,

Chief Counsel.

[FR Doc. 91-21146 Filed 8-29-91; 1:04 pm]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Dishwashers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

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

Under the Appliance Labeling Rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range will be applicable until new ranges are published. The Commission is today announcing that the ranges published on August 9, 1989, will remain in effect until new ranges are published.

EFFECTIVE DATE: September 4, 1991.

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

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule,[1] pursuant to section 324 of the Energy Policy and Conservation Act of 1975,[2] covering certain appliance categories, including dishwashers. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all dishwashers presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a dishwasher is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range of estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of test procedures developed by the Department of Energy, which are referenced in the rule.

Section 305.8(b) of the rule requires manufacturers to report the energy usage of their models annually by specified dates for each product type.[3] Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing.

To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for dishwashers have been received and analyzed and it has been determined to retain the 1989 ranges, which were based on a national average electric rate of 7.70 cents per kilowatt hour and a national average natural gas rate of 55.2 cents per therm and were published on August 9, 1989.[4] In consideration of the foregoing, these current ranges for dishwashers will remain in effect until the Commission publishes new ranges for these products.

List of Subjects in 16 CFR Part 305

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

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

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as

[1] 44 FR 66466, 16 CFR part 305.

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

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

[4] 54 FR 13263.

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

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91–21104 Filed 9–3–91; 8:45 am]

BILLING CODE 6750–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 5, 15 and 33

Domestic Exchange-Traded Commodity Options; Requirements for Option Contract Market Designation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") has determined to adopt as final the rules it proposed to remove or to amend relating to several of the requirements for designation of options on futures contracts (56 FR 14896 (April 12, 1991)). The commission proposed either to remove or to amend several of these requirements for designation based upon its recent review of all of its designation procedures. These requirements for designation of options on futures contracts have gone largely unchanged from the time option trading was made permanent, and in some instances, from the inception of the pilot option program.

Accordingly, Rule 33.4(a)(5)(iii), which requires a specified volume of trading in the underlying futures contract prior to designation; Rule 5.4, which establishes a delisting criterion for the trading of options on low-volume futures contracts; Rule 33.4(b)(1)(iv), which requires that exchanges adopt rules establishing a period of time before the expiration of an option during which no new option strike prices can be added; and Rule 33.4(g), which requires exchanges to provide a comprehensive list of occupational categories of commercial users of the commodity underlying the option are being removed. In addition, the Commission is revising Rule 33.4(d)(1), which requires exchanges to justify expiration dates of less than 10 days before first notice day or last trading day of the future, whichever comes first, and redesignating it as Rule 33.4(b)(2). The Commission also is amending Rule 15.00(b)(2), to raise to 50 contracts the minimum reportable level requiring no exchange justification.

EFFECTIVE DATE: October 4, 1991.

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K. St. NW., Washington, DC 20581, (202) 254–3201 or 254–6990, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Act), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act the Commission has submitted these amended rules and their associated information collection requirements to the Office of Management and Budget.

While these amended rules have no increased information collection burden associated with them, they are a part of a group of rules which has a public reporting burden which is estimated to average 50.34 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this estimate of no increased burden to Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., 20581, and to the Office of Management and Budget, Paperwork Reduction Project (3038), N.E.O.B., Washington, DC 20503.

B. History of Option Trading in the United States

In enacting the Commodity Exchange Act in 1936, Congress, concerned with the history of excessive price movements and severe disruptions in the futures markets attributed to speculative trading in options, prohibited option trading in all of those commodities then regulated under the Act.[1] Massive fraud in the offer and sale of options in commodities not so enumerated in the Act occurred in the late 1960s and early 1970s. Consequently, in creating the new Commodity Futures Trading Commission, Congress granted it broad power to regulate transactions in options in the previously unregulated commodities.[2] Following a period when options were banned because of abuses,[3] the Congress, in 1982, authorized the Commission to implement a pilot program for the trading of options on futures contracts on designated contract markets. See section 206(2) of the Futures Trading Act of 1982, 96 Stat. 2294, 2301. It was against this background that the Commission promulgated its rules governing a three-year pilot program for the trading of options on domestic exchanges. Many of the rules that were promulgated in connection with options trading were in response to this prior history of abuses. Others were promulgated in light of the absence of any recent trading experience with exchange-traded option products, or to assess the success of the pilot program itself.

C. Designation Requirements for Options

Among the requirements for designation of option contracts was a limitation on the number of option contracts permitted on each exchange. 17 CFR 33.4 (1982). In addition, as a condition for designation of an option, the underlying futures contract was required to meet a quantitative test of liquidity. 17 CFR 33.4(a)(5)(iii)(1982). Moreover, option contract markets were required to provide rules establishing a period before the expiration of an option during which no new strike prices may be introduced, 17 CFR 33.4(b)(1)(iv); to justify an expiration date on the option if less than 10 business days before the earlier of the last trading day or the first notice day of the underlying futures contract, 17 CFR 33.4(d)(1); and to provide a list of occupational or business categories of commercial users of the commodity underlying the relevant futures contract, 17 CFR 33.4(g) (1982).[4]

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[1] Act of June 15, 1936, chapter 545, section 5, 49 Stat. 1484.

[2] Commodity Futures Trading Commission Act of 1974, Public Law No. 93–463, section 402(c), 886 Stat. 1412–13 (codified at 7 U.S.C. 6c(b)).

[3] See, 43 FR 16153, (April 17, 1978). This suspension was codified by the Congress when it enacted the Futures Trading Act of 1978, Public Law No. 95–406, 3, 92 Stat. 867.

[4] Many of the rules were promulgated in light of the lack of previous trading history in options. Among them were the liquidity requirement of Rule 33.4(a)(5)(iii) and the requirement that exchanges justify the expiration of an options contract less than 10 days before first notice date, or the last trading day of the underlying future, 17 CFR 33.4(d)(1).

Similarly, Commission Rule 33.4(g), which requires exchanges to provide, as part of the designation application, a comprehensive list of occupational or business categories of persons which they would consider commercial users of the physical commodity underlying the futures contract

Continued

Subsequently, as a consequence of the ending of the pilot status of the program, some of the designation criteria were modified, and others added. For example, in connection with removal of the numerical limitations on the number of option contracts which could be traded on any one exchange, the Commission determined to reconsider the liquidity test, raising the threshold volume level of the underlying futures contract for designation of an option on such a futures contract from 1,000 contracts per week to the current level of 3,000 contracts per week.[5] Coupled with the increase in the threshold limitation, the Commission adopted an alternative test which permitted the introduction of an options on a futures contract with less than a full year's trading history of the underlying futures.

In addition, the Commission promulgated a delisting criterion for options, Rule 5.4, which provided that if volume in the underlying futures contract fell below 1,000 contracts per week for the preceding six month period, no new option expirations could be added. Listing of expirations could be resumed once volume in the underlying futures contracts rose to the level of 2,000 contracts per week for a period of three months.[6]

II. The Proposed Rulemaking

A. The Proposed Rules

The Commission proposed to delete the volume requirement for the designation of, and the delisting requirement for, options on futures contracts based upon its experience in previously granting exemptions from these requirements in recent years. As the Commission noted in proposing to delete the volume requirement for designation, it:

based its determinations on whether to grant such exemptions * * * on several factors. These included whether the option's underlying cash market exhibits a high level of liquidity, whether the terms of the underlying futures contract ensure the opportunity for arbitrage and close alignment between the cash and futures markets and whether an accurate and widely disseminated price series exists which is representative of values of the commodity underlying the future.

[T]he experience of the Commission has been that no problems have been observed directly related to the volume of trading or lack thereof in the underlying futures at the time of designation, regardless of the particular characteristics of the cash markets or degree of liquidity of the futures markets for any of the option contracts for which exemptions have been approved.

[T]rading history indicates that the prospective concerns of the Commission regarding the potential for disruption of an illiquid underlying futures market by the designation of an option contract on that futures have not materialized.

56 FR 14898.

Similarly, the Commission has observed no adverse affects from granting exemptions from the delisting requirement under Rule 5.4. As the Commission noted in proposing to delete this requirement:

In light of the Commission's proposed deletion of the initial volume requirement, the delisting requirement must also be reconsidered. Because the initial volume requirement would no longer be in effect, if Rule 5.4 were not modified, virtually every designation would require the Commission to consider whether to grant an exemption from the delisting requirement. As detailed above, the Commission's concern at the outset of option trading, that such trading might have an adverse effect on illiquid futures markets or on the customers in such markets, has not been borne out. Moreover, the actual exemptions which have been granted have not resulted in any adverse effect on an options market, its underlying futures market, or to customers in either of the markets.

56 FR 14899.

Based upon its experience in designating new option contracts, the Commission proposed to amend Rule 33.4(d)(1) routinely to permit options on futures contracts which are settled through physical delivery to expire at any time prior to the day before first notice day or the last trading day, whichever comes first. Options on futures contracts which are cash-settled were proposed to be permitted to expire simultaneously with the underlying futures. In particular, the Commission based its proposal on its experience that in light of the book entry of expired options into positions in the underlying futures contracts, and in general, the existence of sufficient liquidity in the futures through the last trading day, expiration of the option could be moved closer to the last trading day than the currently recommended ten days without adverse impact. In this regard, the Commission noted that exchanges have demonstrated routinely that the related futures contract has sufficient liquidity, and, in the case of cash-settled futures, the Commission has approved simultaneous expiration of the option and its underlying futures.

However, in proposing this modification, the Commission noted that:

those contract markets adopting an option expiration date less than ten days from the last trading day would be required, as part of an effective market surveillance program, to have daily large trader reports for the expiring option during the applicable period.

56 FR 14899.

The Commission also proposed to remove the requirement that exchanges provide for a period in which no new strike prices may be added (Commission Rule 33.4(b)(1)(iv)).[7] Its proposal was based upon the lack of particular problems or complaints arising from the listing of new strike prices during the period through the last trading day.[8] Moreover, the enhanced economic utility of the option for hedging, particularly in times of high volatility, which may result from permitting the listing of additional strike prices near expiration supported the removal of this requirement.

In addition, the Commission, based upon its experience and accumulated expertise, proposed to remove the requirement of Commission rule 33.4(g) that exchanges provide a comprehensive list of occupational or business categories of commercial users of the commodity underlying the option. As the Commission made clear in proposing to delete this requirement, however, it will continue to make appropriate modifications to these categories as appropriate and that it will continue to use these codes in future special calls.

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of which the option is traded, was promulgated to assist the Commission in determining the appropriate categories of commercial traders for these newly traded instruments.

[5] In so doing, the Commission reasoned that: an initial volume of 1,000 contracts per week generally may not be adequate to ensure that a trader would be able to exercise an option into a sufficiently liquid market so that the resulting position could be offset without suffering a substantial loss of the option's true economic value.

51 FR at 17467.

[6] The Commission determined that a delisting criterion was necessary based upon an expectation that with permanent status, the volume of trading in various option markets might fluctuate greatly over the years. The Commission noted that such a delisting criterion would establish: the minimum acceptable level below which the individual trader in the underlying futures market may be adversely affected by the existence of a derivative market.

51 FR 17469.

[7] Rule 33.4(b)(1)(iv) requires exchanges to adopt rules which prescribe the period of time before the expiration of an option during which no new strike prices may be introduced. Generally, exchanges provided that no new strike prices could be added during the month in which the options expire. This usually resulted in no new strike prices being added for a two-to-three week period before expiration.

[8] Over time and with greater trading experience, exchanges justified rules permitting the listing of new at-the-money strike prices during the final trading days. However, the listing of additional strike prices with little time value remaining could pose customer protection issues similar to those raised by the offer of deep-out-of-the-money options. Insofar as the exchanges are required under Commission Rule 33.4(c) separately to conduct sales practice audits of member futures commission merchants concerning such practices, the Commission approved these exchange rules extending the listing of such new strike prices.

Accordingly, these codes should continue to be assigned to all existing and new accounts.

Finally, the Commission also proposed to amend Commission Rule 15.00(b)(2) which provides that the reportable level for option contracts is twenty-five contracts, except as otherwise approved by the Commission. Although the Commission has approved higher reporting levels in specific instances, it determined that in light of its surveillance experience, and to reduce the reporting burden on traders and the paperwork burden on exchanges associated with routine requests for a higher minimum level, such a higher minimum reporting level—fifty contracts—was now appropriate.

B. Comments Received

The Commission received three comments, all from futures exchanges, in response to its proposed amendments to the requirements for designation of option contracts. Two comments were generally supportive of the proposed amendments. One commenter noted that it

> commends the Commission for recognizing and responding to the realities of options trading in today's markets by proposing to eliminate unnecessary burdens contained in the existing rules and supports the proposed rule amendments and deletions primarily for the reasons set forth in the Commission's Notice of Proposed Rulemaking. In fact, the Commission's experience when exemption procedures were used to alleviate certain of the requirements now proposed to be deleted demonstrates that there will be no adverse regulatory impact from the proposals.

This commenter continued by noting with approval the specific proposals by the Commission to remove the volume requirement for designation of options on futures contracts, reasoning that "development of futures and related options markets may occur in tandem and a bright line volume test may ultimately deter the growth and development of important hedging and pricing markets." Finally, the commenter expressed strong support for the Commission's proposal to remove the requirement that exchanges provide for a period in which no new strike prices may be added before the expiration of the option.

The third commenter did not offer views regarding the specific proposed rule changes, but rather offered comments of a general nature. In this regard, the commenter "commends the Commission for undertaking this review of its contract designation requirements for options and for eliminating certain requirements while adding flexibility to others." However, this commenter contended that "[t]he full value of the proposed rulemaking will be achieved only if it results in more expeditious Commission processing of option contract proposals." The comment continued in this vein, suggesting that:

> the current contract approval process, no matter how efficiently it is administered, will always be an impediment to innovation. The requirement that there be explicit CFTC contract designation prior to launch and the ability of the CFTC to issue "materially incomplete" letters inhibits an exchange's ability to respond quickly to a market opportunity. The requirement that the contract proposal be published for public comment allows competing exchanges and off-exchange firms to copy new ideas, thus discouraging innovation.

The Commission has considered carefully these comments, and is adopting as final the proposed amendments. However, in response to the preceding comment, the Commission further notes that it is publishing separately in the **Federal Register** a request for comments on revisions to Guideline No. 1. Guideline No. 1 is the interpretative statement of the Commission which provides guidance to the exchanges on what information must be included in applications for contract market designation. The Commission anticipates that, if adopted, these proposed revisions will streamline the designation approval process by clarifying the standard of review for specified terms and conditions of proposed contract designations, reducing the required submission of unnecessary or redundant materials, and introducing a revised checklist format for the designation of options contracts. These revisions are based, in part, on the modifications hereby being promulgated by the Commission.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small entities. The Commission has previously determined that "boards of trade or contract markets" and "large traders" are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These rules modify the requirements under which boards of trade may be designated as contract markets in options and revise the minimum reporting levels at which designated contract markets must collect information regarding the trading positions of large option traders. Accordingly, as promulgated, these rules would have no significant impact on a substantial number of small entities. For the above reasons, and pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission particularly invited comments from any firms or other persons which believed that the promulgation of these proposed rule amendments might have a significant impact upon their activities. No such comments were received.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Act), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act the Commission has submitted these amended rules and their associated information collection requirements to the Office of Management and Budget.

While these amended rules have no increased burden, the group of rules of which this is a part has the following burden:

Average Burden Hours per Response—50.34

Number of Respondents—10,727,245

Frequency of Response—Monthly

Persons wishing to comment on the estimated paperwork burden associated with these amended rules should contact Gary Waxman, Office of Management and Budget, room 3228, N.E.O.B., Washington, DC 20503. Copies of the information collection submission to OMB are available from Joe F. Mink, C.F.T.C. Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254-9735.

List of Subjects

17 CFR Part 5

Commodity exchange, Commodity exchange designation procedures, Commodity futures, Commodity options, Contract markets, Contract market designation fees, Dormant Contract markets, Low-volume contract markets, Low volume periods, Reporting requirement, Trading month.

17 CFR Part 15

Persons required to report, Quantities fixed for reporting.

17 CFR Part 33

Commodity exchange, Commodity exchange designation procedures,

Commodity exchange rules. Commodity futures, Commodity options.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1)(A), 4c(b), 4c(c), 4c(d), 4g, 4i, 5, 5a, 6 and 8a thereof, 7 U.S.C. 2, 4, 6c(a), 6c(b), 6c(d), 6g, 6i, 7, 7a, 8 and 12a, the Commission hereby amends Chapter I of title 17 of the Code of Federal Regulations as follows:

PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

1. The authority citation for part 5 continues to read as follows:

Authority: 7 U.S.C. 6c, 7, 7a, 8 and 12a, unless otherwise noted.

§ 5.4 [Removed]

2. Section 5.4 is removed.

PART 15—REPORTS—GENERAL PROVISIONS

3. The authority citation for part 15 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 5, 6a, 6c(a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19, and 21; 5 U.S.C. 552 and 552(b).

4. Section 15.00 is amended by revising the section heading and paragraph (b)(2) to read as follows:

§ 15.00 Definitions of terms used in parts 15 to 21 of this chapter.

* * * * *

(b) * * *

(2) For purposes of reports regarding commodity options—

(i) For reports specified in part 16 and in § 17.01 of this chapter, any open contract position on any one contract market in the put option or separately in the call option of a specified option expiration date, which is carried on the books of any one futures commission merchant or foreign broker or which is held by a member of a contract market, and which, at the close of the market on any business day, equals or exceeds 50 options on futures contracts or 50 options on physicals, except as otherwise approved by the Commission.

(ii) For reports specified in §§ 18.00 and 18.04 of this chapter, and for recordkeeping requirements specified in § 18.05 of this chapter, 50 or more open options on futures contracts or 50 or more open options on physicals on any one contract market in a put option or separately in a call option of a specified expiration date.

* * * * *

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

5. The authority citation for part 33 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a–1, 13b, 19 and 21, unless otherwise noted.

6. Section 33.4 is amended by removing and reserving paragraphs (a)(5)(iii) and (b)(1)(iv), by removing paragraph (g), by removing and reserving paragraph (d)(1) and by adding paragraph (b)(2) to read as follows:

§ 33.4 Designation as a contract market for the trading of commodity options.

* * * * *

(b) * * *

(2) Prescribe an expiration date of the option that is not less than one business day before the earlier of the last trading day or the first notice day of any futures contract on the same or a related commodity; *provided, however,* that where the underlying futures contract is cash-settled, the option may expire simultaneously with the expiration of the futures contract.

* * * * *

Issued in Washington, DC, this 27th day of August, 1991, by the Commodity Futures Trading Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 91–21044 Filed 9–3–91; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 90F–0078]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 3,9-bis{2-[3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy]-1,1-dimethylethyl}-2,4,8,10-tetraoxaspiro[5.5]-undecane as an antioxidant in the manufacture and processing of polypropylene, complying with § 177.1520 *Olefin polymers* (21 CFR 177.1520), intended for use in contact with food. This action is in response to a petition filed by Sumitomo Chemical America, Inc.

DATES: Effective September 4, 1991. Written objections and requests for a hearing by October 4, 1991.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 19, 1990, (55 FR 10114), FDA announced that a food additive petition (FAP 9B4164) had been filed by Sumitomo Chemical America, Inc., 345 Park Ave., New York, NY 10154, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 3,9-bis{2-[3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy]-1,1-dimethylethyl}-2,4,8,10-tetraoxaspiro[5.5]-undecane as an antioxidant in the manufacturing and processing of polypropylene, complying with § 177.1520, intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe and that 21 CFR 178.2010(b) should be amended as set forth above.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no

significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 4, 1991 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall specify with particularly the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

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

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

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* *	* * *
3,9-Bis{2-[3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy]-1,1-dimethylethyl}-2,4,8,10-tetraoxaspiro[5.5]-undecane (CAS Reg. No. 90498-90-1).	For use only at levels not to exceed 0.2 percent by weight of polypropylene complying with § 177.1520(c), item 1.1 of this chapter. The finished polymer is to be used in contact with food only under conditions of use D through H described in Table 2 of § 176.170(c) of this chapter.
* *	* * *

Dated: August 23, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-21111 Filed 9-3-91; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510, 520, and 529

Animal Drugs, Feeds, and Related Products; Abbott Laboratories

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the drug labeler code currently assigned to Abbott Laboratories.

EFFECTIVE DATE: September 4, 1991.

FOR FURTHER INFORMATION CONTACT: John W. Borders, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8737.

SUPPLEMENTARY INFORMATION: FDA has been informed by Abbott Laboratories, North Chicago, IL 60064, that it is no longer using drug labeler code "043731." Instead, the firm is currently using "000074." Accordingly, FDA is amending the regulation in 21 CFR 510.600 (c)(1) and (c)(2) to reflect the current drug labeler code. Also, the agency is amending 21 CFR 520.182(b) and 529.1526(b) to insert the current drug labeler code for Abbott Laboratories.

List of Subjects

21 CFR Part 510

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

21 CFR Parts 520 and 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "Abbott Laboratories," by removing the drug labeler code "043731" and replacing it with "000074," and in the table in paragraph (c)(2) by removing the entry for "043731" and numerically adding a new entry "000074" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Abbott Laboratories, North Chicago, IL 60064	000074
* * * *	*

(2) * * *

Drug labeler code	Firm name and address
*	* * * *
000074	Abbott Laboratories, North Chicago, IL 60064.
*	* * * *

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.182 [Amended]

4. Section 520.182 *Bicyclohexylammonium fumagillin* is amended in paragraph (b) by removing "043731" and replacing it with "000074".

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

5. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 529.1526 [Amended]

6. Section 529.1526 *Nifurpirinol capsules* is amended in paragraph (b) by removing "043731" and replacing it with "000074".

Dated: August 22, 1991.

Philip J. Frappaolo,

Acting Director, Office of Surveillance and Compliance, Center for Veterinary Medicine.

[FR Doc. 91–21112 Filed 9–3–91; 8:45 am]

BILLING CODE 4160–01–M

PEACE CORPS

22 CFR Part 302

Organization

CFR Correction

In title 22 of the Code of Federal Regulations, part 300 to end, revised as of April 1, 1991, the following changes should be made:

§ 302.2 [Corrected]

1. In § 302.2(a)(3)(i), the words "Zaire, Kinshasa" should be inserted on page 6 in the final listing of countries in that paragraph following "Togo, Lombacteria." The entry "Togo, Lombacteria" should read "Togo, Lome."

2. The first seven lines of § 302.2(a)(3)(ii), inadvertently omitted, will be reinstated as follows:

(ii) *Inter-America Region*
Belize, Belize City
Costa Rica, San Jose
Dominican Republic, Santo Domingo
Eastern Caribbean, Bridgetown, Barbados
Ecuador, Quito
Guatemala, Guatemala City

The text currently printed between the listings of "Togo, Lombacteria" and "Haiti, Port-au-Prince" will be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. H–033d]

RIN 1218–AA26

Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Extension of partial stay and amendment of final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is hereby extending the partial administrative stay of the revised final standards for occupational exposure to asbestos, tremolite, anthophyllite, and actinolite for general industry (29 CFR 1910.1001) and construction (29 CFR 1926.58), insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite. The current partial stay, originally set to expire on April 21, 1987 and extended until August 31, 1991 is being further extended until February 28, 1992 to allow OSHA to complete supplemental rulemaking limited to the issue of whether non-asbestiform tremolite, anthophyllite, and actinolite should continue to be regulated in the same standard as asbestos, or should be treated in some other way. OSHA also is making minor conforming amendments to notes to the affected standards.

DATES: *Effective Date:* August 30, 1991.

The partial stay of 29 CFR 1910.1001 and 1926.58 is extended until February 28, 1992.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N–3647, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: In June 1986, OSHA issued revised standards governing occupational exposure to asbestos, tremolite, anthophyllite, and actinolite for general industry and construction which were to be effective on July 21, 1986. (See 51 FR 22812 et seq., June 20, 1986).

On October 17, 1986, OSHA published a partial stay of the revised standards insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite, and actinolite, in order to enable the Agency to review new submissions raising questions about the appropriateness of regulating these minerals in the revised asbestos standards, and to allow sufficient time to reopen the rulemaking record and conduct supplemental rulemaking proceedings limited to this issue (51 FR 37002).

OSHA extended the stay until July 21, 1988 in a notice published on April 30, 1987 (52 FR 15722), until July 21, 1989, in a notice published on July 20, 1988 (53 FR 27345), until November 30, 1990, in a notice published on July 21, 1989 (54 FR 30704), and again until August 31, 1991 in a notice published on December 10, 1990, (55 FR 50685).

The last two extensions were issued in order to allow OSHA sufficient time to conclude rulemaking on whether and how to regulate the non-asbestiform minerals at issue.

Concurrently, on February 12, 1990 OSHA published a notice of proposed rulemaking (55 FR 4938) to amend the asbestos standards (29 CFR §§ 1910.1001, 1926.58) to remove non-asbestiform tremolite, anthophyllite, and actinolite from their scope.

Public hearings were held in Washington, D.C., May 8–14, 1990. At the close of the hearings, the Administrative Law Judge set the following deadlines for participants to send material to OSHA: June 28, 1990 for the submission of additional information and July 23, 1990 for submission of comments, summations and briefs.

After the close of the post-hearing comment periods, the American Thoracic Society (ATS) submitted a report to the record concerning the health risks of non-asbestiform tremolite, actinolite, and anthophyllite (Ex. 525). The Agency set an additional period, later extended to December 14, 1990, to enable the public to submit written comments and analyses on all issues raised in the ATS report. (See 55 FR 40677, 55 FR 46958).

The Agency is evaluating the rulemaking record to determine whether it supports the proposal to remove the non-asbestiform minerals from the scope of the asbestos standards. To date, the record consists of 526 exhibits, 24 comments, transcripts of the five day rulemaking hearing, and additional submissions relating to the ATS report.

Because of the size of the record and the complexity of the issues, the Agency's review of the rulemaking record has taken longer than anticipated. Additional time will be needed to complete the intra-departmental and inter-departmental review process. The formulation of a final regulatory determination is now

expected to be completed by February 28, 1992. Thus, an extension of the stay until February 28, 1992 is necessary to conclude the rulemaking on the regulation of non-asbestiform tremolite, anthophyllite, and actinolite.

As was the case with the initial partial stay, the 1972 standard governing occupational exposure to asbestos (redesignated 29 CFR 1910.1101) will remain in effect to the extent of the stay during the period of the extension.

The full text of the stay with respect to these non-asbestiform minerals was published in the October 17, 1988 **Federal Register** (51 FR 37002).

With respect to the extension of the partial stay, OSHA finds that advance notice and opportunity for comment are impractical and unnecessary within the meaning of 5 U.S.C. 553 in view of the limited duration of the extension and the continued applicability of the 1972 standard (29 CFR 1910.1101) to cover the gaps in coverage created by the partial stay.

The minor amendments to the notes to 29 CFR 1910.1001, 1910.1101, and 1926.58, similarly are made without advance notice and opportunity for comment. OSHA finds such process unnecessary and impracticable in that the changes merely reference the extension of the stay and restate the applicability of the 1972 standard. No evidentiary issues are involved.

List of Subjects in 29 CFR Parts 1910 and 1926

Asbestos, Occupational safety and health.

Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

It is issued pursuant to sections 4, 6(b), 6(c) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), the Longshore and Harbor Workers Compensation Act (33 U.S.C. 941), 29 CFR part 1911, Secretary of Labor's Order No. 1–90 (55 FR 9033), as applicable.

Signed at Washington, DC, this 29th day of August, 1991.

Gerard F. Scannell,

Assistant Secretary of Labor.

Amended Standards

Parts 1910 and 1926 of title 29 of the Code of Federal Regulations is hereby amended as follows:

PART 1910—[AMENDED]

1 The authority citation for subpart Z of part 1910 continues to read as follows:

Authority: Secs. 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable; and 29 CFR Part 1911.

All of Subpart Z issued under Sec. 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b), except those substances listed in the Final Rule Limits columns of Table Z–1–A, which have identical limits listed in the Transitional Limits columns of Table Z–1–A, Table Z–2 or Table Z–3. The latter were issued under Section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2, and Table Z–3 also issued under 5 U.S.C. 553. Section 1910.1000, Tables Z–1–A, Z–2 and Z–3 not issued under 29 CFR 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 653.

Section 1910.1003 through 1910.1018 also issued under 29 CFR 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Section 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

§ 1910.1001 [Amended]

2. Section 1910.1001 is hereby amended by revising the note at the end of the section to read as follows:

Note to § 1910.1001—Pursuant to an administrative stay effective July 21, 1986, published on October 17, 1986 (51 FR 37002), extended to July 21, 1988 (52 FR 15722), to July 21, 1989 (53 FR 27345), to November 30, 1990 (54 FR 30704), to August 31, 1991 (55 FR 50685) and to February 28, 1992 (57 FR _____) enforcement of this section is stayed as it applies to non-asbestiform tremolite, anthophyllite and actinolite. During the period and to the extent of this stay, the 1972 standard governing occupational exposure to asbestos (redesignated as 29 CFR 1910.1101) will remain in effect.

3. Section 1910.1101 is hereby amended by revising the note preceding § 1910.1101(a) to read as follows:

§ 1910.1101 Asbestos

Note—This section applies in lieu of the revised standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite (29 CFR 1910.1001; 29 CFR 1926.58), during the period and to the extent that the revised standards have been partially stayed. (See 51 FR 37002, October 17, 1986, 52 FR 15722, April 30, 1987, 53 FR 27345, July 20, 1988, and 54 FR 30704, July 21, 1989, 55 FR 50865; December 10, 1990, and 56 FR _____, September 4, 1991, for a description of the stay).

PART 1926—[AMENDED]

Subpart D—[Amended]

4. The authority citation for subpart D of part 1926 continues to read as follows;

Authority: Secs. 4, 6 and 8, Occupational Safety and Health Act of 1970, (29 U.S.C. 653, 655, 657) Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, and Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable. Sections 1926.55(c) and 1926.58 also issued under 29 CFR part 1911.

§ 1926.58 [Amended]

5. Section 1926.58 is hereby amended by revising the note at the end of the section to read as follows:

Note to § 1926.58—Pursuant to an administrative stay effective July 21, 1986, published October 17, 1986 (51 FR 37002), extended to July 21, 1988 (at 52 FR 1577, April 30, 1987), to July 21, 1989 (53 FR 27345, July 20, 1988) to November 30, 1990 (54 FR 30704; July 21, 1989), to August 31, 1991, (55 FR 50685, December 10, 1990), and to February 28, 1992 (56 FR _____, September 4, 1991), enforcement of this section is stayed as it applies to nonasbestiform tremolite, anthophyllite and actinolite. During the period and to the extent of this stay, the 1972 standard governing occupational exposure to asbestos (redesignated as 29 CFR 1910.1101) will remain in effect.

[FR Doc. 91–21087 Filed 8–30–91; 11:20 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 90–067]

RIN 2115–AD67

Recreational Vessel Fees

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This notice corrects an error in the final rule establishing annual recreational vessel fees under the Omnibus Budget Reconciliation Act of 1990, published in the **Federal Register** on July 1, 1991 (56 FR 30244). In 33 CFR 1.30–1(d), the Coast Guard listed specific waters where the recreational vessel

fees applied, including the Colorado River, between Parker Dam and Davis Dam, including Lake Havasu and the Parker Strip. The dam named to indicate the southern end of the Parker Strip, Headgate Rock Dam, was incorrectly identified as the Parker Dam.

EFFECTIVE DATE: This rule is effective on July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Auxiliary, Boating, and Consumer Affairs Division, (202) 267–0979.

Therefore, on page 30252, second column, § 1.30–1(d)(1) is correctly revised to read as follows:

§ 1.30–1 Applicability.

* * * * *

(d) * * *

(1) Colorado River, between Headgate Rock Dam and Davis Dam, including Lake Havasu and the Parker Strip (AZ, CA);

* * * * *

Dated: August 27, 1991.

J.W. Lockwood,

Captain, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 91–20997 Filed 9–3–91; 8:45 am]

BILLING CODE 491–014–M

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33 CFR Part 165

[CGD1 91–128]

Safety Zone Regulations: Salmon River and Lake Champlain, South Junction, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Salmon River Basin at South Junction, New York. This zone is needed to protect the maritime community from the possible dangers and hazards associated with low level aerial spraying of chemical dust toxic to lamprey eels. Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 7 a.m., 11 September, 1991, it terminates at 8:30 p.m., 11 September, 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668–7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C. W. JENNINGS, project officer, Captain of the Port New York, and LT JOHN B. GATELY, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards associated with low level aerial spraying of a chemical dust toxic to lamprey eels. This project is being undertaken by the New York State Department of Environmental Conservation as part of an eight year lamprey eel eradication program in Lake Champlain. This regulation is effective from 7 a.m., 11 September 1991 to 8:30 p.m., 11 September 1991.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

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

2. A new 165.T0128 is added to read as follows:

§ 165.T0128 Safety Zone: Salmon River and Lake Champlain, South Junction, New York.

(a) *Location.* The following area is a Safety Zone: All waters of the Salmon River Basin bounded by a line connecting the following points:

Latitude	*Longitude*
44°38'15" N	73°26'15" W
44°37'00" N	73°26'17" W

and thence, along the shoreline to the point of the beginning.

(b) *Effective date.* This regulation becomes effective at 7 a.m., 11 September, 1991, it terminates at 8:30 p.m., 11 September, 1991.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: August 7, 1991.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91–20738 Filed 9–3–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

RIN 1840–AB42

34 CFR Parts 668 and 682

Student Assistance General Provisions and Guaranteed Student Loan Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends 34 CFR parts 668 and 682 to add Office of Management and Budget (OMB) control numbers to certain sections of the regulations. Those sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

EFFECTIVE DATE: These regulations are effective on September 4, 1991.

FOR FURTHER INFORMATION CONTACT: Doug Laine or Pat Newcombe, Guaranteed Student Loan Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4310, ROB–3), Washington, DC 20202, Telephone Number (202) 708–8242. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m. eastern time.

SUPPLEMENTARY INFORMATION: On July 19, 1991, final regulations for the Student Assistance General Provisions and Guaranteed Student Loan Programs were published in the **Federal Register** at 56 FR 33332. The effective date of certain sections of these regulations was delayed until information collection requirements contained in those sections were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB has approved the information collection requirements, and those sections of the regulations are now effective.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the

Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest and that a delayed effective date is not required under 5 U.S.C. 553(d)(3).

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: August 29, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends parts 668 and 682 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1094 and 1141, unless otherwise noted.

2. The OMB control number for § 668.15 continues to read as follows:

"(Approved by the Office of Management and Budget under control number 1840–0537)".

§ 668.25 [Amended]

3. Section 668.25 is amended by adding "(Approved by the Office of Management and Budget under control number 1840–0537)" following this section.

PART 682—GUARANTEED STUDENT LOAN PROGRAMS

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, and 1094, unless otherwise noted.

2. The OMB control number for § 682.401 continues to read as follows:

"(Reporting and recordkeeping requirements contained in paragraph (b)(4) were approved by the Office of Management and Budget under control number 1840–0538.)".

[FR Doc. 91–21189 Filed 9–3–91; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–3992–5]

Guidelines Establishing Test Procedures for the Analysis of Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: EPA is today issuing a technical amendment to 40 CFR part 136 ("Guidelines Establishing Test Procedures for the Analysis of Pollutants"). In a final rule published on June 15, 1990 (55 FR 24532), EPA amended part 136 by adding the direct current plasma (DCP) atomic emission spectrometric method as an approved method for the measurement of 23 metals under Clean Water Act programs. The June 15 rule listed the DCP method in 40 CFR 136.3, table 1B, footnote 33. However, citation to the DCP method was inadvertently omitted from the list of references in 40 CFR 136.3(b). This action corrects that oversight.

EFFECTIVE DATE: This amendment becomes effective on October 4, 1991. The incorporation by reference of the publication listed in this notice is approved by the Director of the Federal Register as of October 4, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Lichtenberg, Environmental Monitoring Systems Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268. Telephone number: (513) 569–7306.

SUPPLEMENTARY INFORMATION: Table IB of 40 CFR 136.3 cites the "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029" (the DCP method) as an approved inorganics test procedure (see footnote 33 to Table IB) and lists the parameters or pollutants for which this method is approved. Section 136.3(b) states that "[t]he full text of the methods from the following references which are cited in Tables * * * IB * * * are incorporated by reference into this regulation. * * *" The DCP method, however, was inadvertently omitted from the list of references in § 136.3(b). Today's notice corrects that oversight by adding the DCP method to that list of references. Under § 136.3(b), the full text of the DCP method therefore is incorporated by reference into these regulations. As § 136.3(b) states, the full text of this method may be obtained from the source identified and is also available for inspection at the Office of the Federal Register, room 8301, 1110 L Street NW., Washington, DC 20408. The full text of this method is also available for inspection at EPA's Environmental Monitoring Systems Laboratory in Cincinnati, Ohio (see address listed above).

Lists of Subjects in 40 CFR Part 136

Water pollution control, Incorporation by reference.

Dated: August 21, 1991.

Carl Gerber,

Acting Assistant Administrotor, Office of Research and Development.

In consideration of the preceding, EPA amends part 136 of Title 40 of the Code of Federal Regulations as follows:

1. The authority citation for 40 CFR Part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307 and 501(a), Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251 *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended to add the following reference (32) to the list in paragraph (b):

§ 136.3 Identification of test procedures.

* * * * *

(b) * * *

(32) "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method #AESOO29", 1986, Revised 1991 (with appendix), Applied Research Laboratories, Inc., 24911 Avenue Stanford, Valencia, CA 91355. Table IB, Note 33.

* * * * *

[FR Doc. 91–21136 Filed 9–3–91; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 248, 252, and 253

[SWH–FRL–3992–7]

Guidelines for Federal Procurement of Building Insulation Products Containing Recovered Materials, Lubricating Oil Containing Re-refined Oil, and Retread Tires

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has issued a series of guidelines designed to encourage the Federal government's use of products containing materials recovered from solid waste. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), as amended, 42 U.S.C. 6962, states that if a procuring agency purchases items designated in EPA's guidelines, such items must be composed of the highest percentage of recovered materials practicable. EPA is required to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002.

Between June of 1988 and February of 1989, EPA published guidelines for purchasing re-refined lubricating oil (40 CFR part 252; 53 FR 24715, June 30, 1988), retread tires (40 CFR part 253; 53 FR 46572, November 17, 1988), and building insulation products containing recovered materials (40 CFR part 248; 54 FR 7356, February 17, 1989). Each guideline included a general discussion of the factors affecting the availability and relative price of the recycled products but did not provide detailed information. Today EPA is announcing how and where interested persons can obtain detailed information about the availability and price of re-refined lubricating oil, retread tires, and building insulation products containing recovered materials.

ADDRESSES: The public docket for this notice is located in Room M–2427, (Mail code OS–305) of the U.S. EPA, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9 am to 4 pm, Monday through Friday, excluding holidays. To review docket materials, the public must make an appointment by calling (202) 260–9327. Refer to docket - F–91–RLOA–FFFFF for information on - re-refined oil, docket F–91–PRTA–FFFFF for information on retread tires, and docket F–91–PIPA–FFFFF for information on building insulation products containing recovered materials.

Materials may be copied from any regulatory docket at a cost of 15 cents per page. Copying totaling less than $15 (100 pages) is free.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Procurement Guidelines Hotline, (703) 941–4452. For technical information, contact Kim Carr, Office of Solid Waste (OS–301), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone: (202) 260–7600.

SUPPLEMENTARY INFORMATION:

I. Background

Section 6002 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6962, requires each procuring agency subject to the statute to procure certain items composed of the highest percentage of recovered materials practicable. The U.S. Environmental Protection Agency (EPA) is responsible for preparing guidelines which designate these items, assist procuring agencies in meeting the statutory requirements, and provide information on recovered materials. These guidelines must designate items which are or can be produced with recovered materials and whose procurement will carry out the objectives of section 6002.

Section 6002(d)(2) provides that within one year after the publication of an EPA guideline, Federal procuring agencies must assure that their specifications for the items designated by the guideline require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the designated items. In addition, section 6002(i) requires each procuring agency to develop an affirmative procurement program for procuring the designated items. The program must (1) assure that items composed of recovered materials will be purchased to the maximum extent practicable, (2) be consistent with applicable provisions of Federal procurement law, and (3) contain at least the following four elements:

(a) A recovered materials preference program;

(b) An agency promotion program;

(c) Procedures for requiring estimates, certification, and verification of recovered material content; and

(d) Annual review and monitoring of the effectiveness of the procurement program.

In addition, section 6002(e) requires EPA to provide information as to the availability and relative price of products containing recovered materials.

To date, EPA has published guidelines for five items: cement and concrete containing fly ash (40 CFR part 249, 48 FR 4249, January 28, 1983), paper and paper products (40 CFR part 250, 53 FR 23546, June 22, 1988), re-refined lubricating oil (40 CFR part 252, 53 FR 24699, June 30, 1988), retread tires (40 CFR part 253, 53 FR 46588, November 17, 1988), and building insulation products (40 CFR part 248, 54 FR 7328, February 17, 1989).

The guidelines included a general discussion of the factors affecting the availability and relative price of the recycled products but did not provide detailed information. Instead, EPA stated that it would be developing a plan for educating the various agencies and vendors about price and availability issues (53 FR 46569, November 17, 1988; 54 FR 7353, February 17, 1989). EPA also noted that a number of factors affect price and availability such as location of the purchaser, availability and cost of recovered material feedstocks, and transportation costs. (See 53 FR 24712, June 30, 1988 and 54 FR 7353, February 17, 1989).

EPA's guidelines were challenged by the National Recycling Coalition and the Environmental Defense Fund in part for failure to provide the information on price and availability. In *National Recycling Coalition, Inc. and Environmental Defense Fund, Inc.* v. *Reilly,* D.C. Cir. 88–1511, the D.C. Circuit declined to invalidate the paper guideline with the understanding that EPA would amend the paper guideline by including a reference to where and how interested parties can obtain price and availability information. EPA provided this additional information in a May 6, 1991 **Federal Register** notice (56 FR 20548). Today, EPA is providing this additional information for re-refined lubricating oil, retread tires, and building insulation products containing recovered materials.

II. Variability of Pricing Information

Price and availability of lubricating oil, tires, and building insulation products, whether virgin or recycled, are affected by many variables, including availability and costs of feedstocks, energy costs, distributor mark-up, and freight charges. In addition, price and availability vary depending on whether the product is a common stock item or requires a special order. Price and availability of recycled products also are affected by the geographic location of the purchaser because these products are not uniformly readily available throughout the United States. Therefore, the best sources of current price and availability information for specific quantities of items to be delivered to specific locations are the manufacturers and vendors of the recycled products.

Relative prices of recycled products compared to prices of comparable virgin products also vary. In many cases, re-refined oil, retread tires, and recycled building insulation products are less expensive than their virgin counterparts. Factors such as the overall economy, however, can create oversupplies of virgin products, leading to a decrease in prices for these items.

III. Sources of Information

EPA has developed lists of oil re-refiners and manufacturers of recycled building insulation products. In addition, EPA has obtained a national list of retreaders, broken down by state, from the National Tire Dealers and Retreaders Association. These lists are updated periodically as new sources are identified and product information changes. Procuring agencies should contact the manufacturers to discuss their specific needs and to obtain detailed information on the price and availability of recycled products meeting those needs. To assist procuring agencies, the lists are available at no charge by calling the Procurement Guidelines Hotline at (703) 941–4452. They also can be reviewed in the RCRA public docket, which is located at EPA headquarters in Washington, DC. The address for the docket and procedures for reviewing and copying information are described above under **ADDRESSES**. The docket numbers are F–91–RLOA–FFFFF for re-refined oil, F–91–PRTA–FFFFF for retread tires, and F–91–PIPA–FFFFF for building insulation products.

In addition to EPA's list, there are other publicly available sources of information about re-refined lubricating oils, retread tires, and building insulation products. For example, the Official Recycled Products Guide (RPG) was established in March 1989 to provide a broad range of information on recycled products. Listings include product, company name, address, contact, telephone, fax, type of company (manufacturer or distributor), and minimum recycled content. As with EPA's lists, price information is not included. The RPG is available on a subscription basis from American Recycling Market Inc., 1–800–267–0707.

State and local recycling programs are a potential source of information on local distributors, product price, and availability. In addition, state and local government purchasing offices that are contracting for recycled products may have price and availability information. A list of state purchasing/procurement officials has been placed in the RCRA public docket and will be updated periodically. Table 1 contains a list of states with recycled products purchasing programs, current as of June 1, 1991.

Information is also available from the re-refiners, retreaders, and insulation trade associations. Table 2 identifies the name, address, and telephone number of these associations.

Dated: August 27, 1991.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

TABLE 1.—STATES WITH RECYCLED PRODUCTS PROCUREMENT PROGRAMS AS OF JUNE 1, 1991

State	Law	Basis of program	
		Executive order	Resolution
Alaska	X		
Arizona	X		
Arkansas		X	
California	X		
Colorado	X	X	
Connecticut	X		
Dist. of Columbia	X		
Florida	X		
Georgia	X		
Hawaii	X		
Illinois	X	X	
Indiana	X		
Iowa	X	X	
Kansas		X	
Kentucky		X	
Louisiana	X		
Maine	X		
Maryland	X		
Massachusetts	X	X	
Michigan	X	X	
Minnesota	X	X	
Mississippi	X		
Missouri	X		
Nebraska		X	
New Hampshire	X		
New Jersey	X		
New Mexico	X		
New York	X	X	
North Carolina	X		
North Dakota	X		
Ohio	X	X	
Oklahoma	X		
Oregon	X		
Pennsylvania	X		
Rhode Island	X		
Tennessee	X		
Texas	X		
Utah			X
Vermont	X		
Virginia	X		
Washington	X		
West Virginia	X		
Wisconsin	X		

Sources: American Paper Institute; Richard Keller, Northeast Maryland Waste Disposal Authority; and E.H. Pechan & Associates

TABLE 2.—TRADE ASSOCIATIONS

Oil:
Association of Petroleum Re-refiners
P.O. Box 605
Buffalo, NY 14205
716–855–2757

Tires:
American Retreaders Association
P.O. Box 17203
Louisville, KY 40217
502–361–9219

National Tire Dealers & Retreaders Association
Suite 400
1250 I Street N.W.
Washington, DC 20005
202–789–2300

Tire Retread Information Bureau
900 Weldon Grove
Pacific Grove, CA 93950
408–372–1917

Building Insulation Products:
Cellulose Insulation Standards Enforcement Program
610 Centre City Offices
Dayton, OH 45402
513–222–1024

Society of the Plastic Industry:
Polyurethane Division
355 Lexington Avenue
New York, NY 10017
212–351–5425

Polyurethane Foam Contractors Division
1275 K Street N.W.
Suite 400
Washington, DC 20005
202–371–5313

Polystyrene Division
1275 K Street N.W.
Suite 400
Washington, DC 20005
202–371–5200

Mineral Insulation Manufacturers Association
1420 King Street
Alexandria, VA 22314
703–684–0084

Thermal Insulation Manufacturers Association
8341 S. Sangre Decristo Road
Littleton, CO 80127
303–933–9774

[FR Doc. 91–21133 Filed 9–3–91; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Parts 262 and 271

[SW–FRL–3987–8]

Hazardous Waste Management System; Exports of Hazardous Waste; Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Final Rule; Technical correction to notification of intent to export and annual reports.

SUMMARY: On August 8, 1986 (51 FR 28664), EPA promulgated a final rule that applies to exports of hazardous waste. Section 262.53 of these regulations requires, among other things, that exporters send to EPA's Office of

International Activities advance written notification of their plans to export hazardous waste. In addition, a "note" at the conclusion of § 271.10(e)(2) designates the Office of International Activities as recipient of export notifications required under § 262.53. Section 262.56 of the regulations also requires exporters to send annual reports to the same EPA office. This technical correction provides that such notifications and annual reports must henceforth be sent to EPA's Office of Waste Programs Enforcement.

EFFECTIVE DATE: September 4, 1991.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll free at (1–800) 424–9346. For specific questions on this notice, contact Ms. Angela Cracchiolo, U.S. Environmental Protection Agency, Office of Solid Waste (OS–332), 401 M Street, SW., Washington, DC 20460, (202) 382–4779.

SUPPLEMENTARY INFORMATION:

I. Technical Correction

On August 8, 1986, the U.S. Environmental Protection Agency published final regulations under the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), that apply to exports of hazardous waste (51 FR 28664). In March of 1991, the hazardous waste export and import administrative responsibilities of the Office of International Activities (OIA) were transferred to the Office of Waste Programs Enforcement (OWPE). EPA is today amending §§ 262.53, 262.56, and the "Note" contained in 271.10(e)(2) by changing the address exporters should use for Notification of Intent to Export and for submitting annual reports to: Office of Waste Programs Enforcement, RCRA Enforcement Division (OS–520), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, with "Attention: Notification to Export" prominently displayed on the front of the envelope.

EPA finds that it has good cause to make the corrections immediately effective and to promulgate the amendments without prior notice and opportunity to comment under both section 3017 of RCRA and section 553 of the Administrative Procedure Act. Comment is unnecessary because the technical correction will have no impact on the regulated community; it simply substitutes on EPA office for another as the recipient for the Notices of Intent to Export and the annual reports that must be sent to EPA by the exporter. Good cause also exists to make the corrections immediately effective. The transfer of responsibilities from OIA to OWPE has already occurred, and OIA will forward to OWPE any notifications it receives after the effective date of these corrections.

II. Executive Order No. 12291—Regulatory Impacts

Under Executive Order No. 12291, EPA must determine whether a regulation is "major" and is subject to the requirement to prepare a regulatory impact analysis. Major rules are defined as those which are likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, innovation, or international trade. Today's amendment merely corrects the address hazardous waste exporters must use to comply with the regulations and statute and does not impose new requirements, so it does not have an economic impact. Thus it is not a "major" rule.

III. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements.

IV. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis for all rules unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this rule will not have a significant impact on a substantial number of small entities because it is merely an address change.

List of Subjects in 40 CFR Parts 262 and 271

Administrative practice and procedure, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Water pollution control, and Water supply.

Dated: August 12, 1991.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 is revised to read as follows:

Authority: 42 U.S.C. 6906, 6912(a), 6922, 6923, 6924, 6925, 6937 and 6938.

2. Section 262.53 is amended by revising paragraph (b) to read as follows:

§ 262.53 Notification of intent to export.

* * * * *

(b) Notification shall be sent to the Office of Waste Programs Enforcement, RCRA Enforcement Division (OS–520), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 with "Attention: Notification to Export" prominently displayed on the front of the envelope.

* * * * *

3. Section 262.56 is amended by revising paragraph (b) to read as follows:

§ 262.56 Annual reports.

* * * * *

(b) Reports shall be sent to the following address: Office of Waste Programs Enforcement, RCRA Enforcement Division (OS–520), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

2. Section 271.10(e)(2) is amended by revising the note to read as follows:

§ 271.10 Requirements for generators of hazardous wastes.

* * * * *

Note: Such notices shall be mailed to the Office of Waste Programs Enforcement, RCRA Enforcement Division (OS–520), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

* * * * *

[FR Doc. 91–21137 Filed 9–3–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 410, 413, and 414

[BPD-737-IFC]

RIN 0938-AE52

Medicare Program; Coverage of Erythropoietin (EPO) Used by Competent Home Dialysis Patients

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This final rule—

- Provides for Medicare coverage of EPO used by ESRD beneficiaries who dialyze at home and are competent to use the drug without medical or other supervision; and
- Establishes criteria for selection of patients that can be considered "competent" and for monitoring of the patients who are selected.

This rule is necessary to implement section 4201(d)(1) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90). The purpose is to facilitate use of EPO at home, while ensuring that such use of the drug is safe and effective.

DATES: *Effective date:* These rules are effective September 4, 1991. *Comment date:* We will consider comments received by November 4, 1991.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-737-IFC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC,
or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept audio or video comments or facsimile (FAX) copies of comments. In commenting, please refer to file code BPD-737-IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 245-7890).

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FOR FURTHER INFORMATION CONTACT: Anne Marie Hummel, (301) 966-4637.

SUPPLEMENTARY INFORMATION:

I. Background

Chronic renal failure (CRF) is a progressive and usually irreversible decline in kidney function that does not always require regular dialysis. However, CRF patients who have end-stage renal disease do require a regular course of dialysis or kidney transplantation in order to sustain life.

Section 299I of the Social Security Amendments of 1972 (Pub. L. 92-603) established the Medicare ESRD benefit by extending coverage to any individual who requires either dialysis or transplantation, and meets the following requirements:

- Is fully or currently insured or entitled to monthly benefits under title II of the Social Security Act; or
- Is the spouse or dependent child of the insured or entitled individual.

The methods and amounts of payment for services to ESRD patients have changed over the years and are currently set forth in §§ 410.50 and 413.170-413.179 of the HCFA rules. Law and program policy have moved over the years towards encouraging greater use of self-dialysis and home dialysis.

On June 1, 1989, the Food and Drug Administration approved the drug erythropoietin (EPO). EPO is a sterile, colorless, preservative-free, liquid, biologically engineered protein that stimulates the bone marrow to make new red blood cells. EPO may be covered under the Medicare program when used to treat anemia associated with chronic renal failure. Most chronic renal failure patients are anemic because their kidneys are unable to produce sufficient amounts of erythropoietin.

Patients with this condition include those who require renal dialysis and are eligible for Medicare under the endstage renal disease (ESRD) provisions of the law. EPO may be administered either intravenously or subcutaneously for the treatment of anemia associated with chronic renal failure. Individuals with chronic renal failure use the drug to elevate or maintain the red blood cell level (as measured by the hematocrit or hemoglobin level) and to decrease the need for blood transfusions. Chronic renal patients considered for EPO therapy should generally have a hematocrit of less than 30 percent.

In July, 1989, we issued instructions in the Provider Reimbursement Manual-Part 1 (Chapter 27, Transmittal 11) authorizing Medicare contractors to start paying for the drug EPO, as of June 1, 1989. Coverage instructions were issued in November 1989 in the Intermediary Manual-Part 3 (Transmittal 1449), Carriers Manual-Part 3 (Transmittal 1329), Hospital Manual (Transmittal 576) and the Renal Dialysis Facility Manual (Transmittal 42). The effective date of the coverage instructions was also June 1, 1989. The Medicare regulations were not amended at that time.

Before enactment of Public Law 101-508 (OBRA '90), home use of EPO was not covered. For patients who dialyzed at home to receive Medicare payment for EPO, the drug had to be administered either in an ESRD facility or as a service "incident to" a physician's professional services.

II. Statutory Provisions

Section 4201(d)(1) of OBRA '90 amended section 1861(s)(2) of the Act by adding a new subparagraph (Q) that—

- Provides for coverage of EPO that is used by home dialysis patients who are competent to use the drug without medical or other supervision and for coverage of items related to administration of the drug;
- Requires the Secretary to establish by regulation methods and standards for the safe and effective use of the drug at home.

Section 4201(c) of OBRA '90 (Pub. L. 101-508) provides that EPO furnished to ESRD patients by Medicare approved dialysis facilities will be made at the rate of $11 per 1,000 units, rounded to the nearest 100 units, effective 1-1-91. After applying the part B coinsurance

requirement, payment will be made at the rate of $8.80 per 1,000 units.

A facility furnished EPO as follows:

EXAMPLE

	Units
2/1	3,000
2/4	3,000
2/6	3,000
2/8	3,000
2/11	2,500
2/13	2,500
2/15	2,500
2/18	2,500
2/20	2,560
2/22	2,500
2/25	2,000
2/27	2,000

A total of 31,060 units were furnished during February. In determining payment, the facility's intermediary would round total units to 31,100. The total allowance would be $342.10 (31.1×$11).

Typically, EPO is administered at the end of the dialysis treatment. Unless medical documentation shows that it is necessary to administer EPO at a time other than during a dialysis treatment, only a dialysis facility is paid for EPO administered to patients who are dialyzing on an infacility basis.

For home use of EPO supplied to a home dialysis patient competent to administer the drug without medical supervision, the program may pay only a Medicare approved dialysis facility (for Method I or Method II patients) or a supplier of home dialysis equipment and supplies (for Method II patients only). In any case, payment for home use of EPO is made at the facility rate described above.

If a home patient is NOT competent to use EPO without supervision, and the drug has been prescribed, generally the patient's dialysis facility would administer it. If a physician administers EPO to the patient, it should be the physician who receives the Monthly Capitation Payment (MCP) for furnishing all of the renal-related services that the beneficiary may need. In this latter case Medicare pays on a reasonable charge basis for the drug, but no additional payment is made to the physician for administration.

After the current fiscal year, HCFA will announce annually, for public comment, whether an update in the EPO allowance is appropriate. By statute, any increase will not exceed the percentage increase (if any) in the implicit price deflator for the gross national product for the second quarter of the preceding year over the implicit price deflator for the second quarter of the second preceding year.

Because of our concern as to the safety and efficacy of EPO used in the home, we consulted with the HCFA Physicians Panel, which suggested that we refer the matter to the Office of Health Technology Assessment (OHTA). The OHTA's response after consultation with FDA, indicated that EPO can be administered safely and effectively in the home by properly trained patients who are subject to regular monitoring of blood pressure and hemoglobin or hematocrit measurements. In addition, some professional medical organizations gave us their protocols and guidelines for home use of EPO. We consulted those guidelines in developing these regulations.

For health and safety reasons, we are allowing only the patient's dialysis facility, or the physician responsible for furnishing all dialysis-related services to the patient to participate in patient selection, training, and monitoring. Suppliers may not select, train, or monitor patients for this purpose. Suppliers are not subject to conditions of participation, nor to other health and safety requirements. Furthermore, this policy is consistent with the provisions of section 6203 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), which require that the renal dialysis facility or an approved provider of services be responsible for all self-care home dialysis support services. Nonetheless, suppliers may furnish EPO to home dialysis patients who have been trained and are routinely monitored by a dialysis facility or physician.

III. Provisions of the Regulations

We have amended subpart U of part 405 of the HCFA rules, which sets forth the conditions for coverage of services furnished to ESRD beneficiaries, as discussed below.

A. Patient Selection

To ensure the safe and effective use of EPO by home dialysis patients, we have amended § 405.2163 to require that the patient's dialysis facility or the physician responsible for all dialysis-related services make a comprehensive assessment of the patient and the patient's needs at the time of selection for EPO therapy.

We believe and emphasize that proper patient selection is necessary for a safe, effective program of EPO therapy at home. In considering EPO therapy in the home setting, it is important for the dialysis facility or the physician responsible for all dialysis-related services to assess the degree of self-care that is feasible, that is, whether the patient will actually be able to administer the drug, and if not, whether the patient would have available the necessary assistance from a care-giver. We believe that patient compliance with certain elements is necessary for successful EPO therapy. Accordingly, we are requiring that, in order to be selected for home use of EPO, a patient must—

- Be a home dialysis patient (either peritoneal or hemodialysis method).
- Have a hematocrit (or comparable hemoglobin) of less than 30 percent unless medical documentation justifies a patient's need for EPO with a hematocrit higher than 30 percent. For example, a patient with severe angina, severe pulmonary disease, or severe hypotension may require EPO to prevent adverse symptoms even though the patient has a higher hematocrit
- Be under the care of the physician who is responsible for the dialysis-related services and who prescribes EPO, and under the care of the renal dialysis facility that establishes the plan of care for the services and monitors the progress of the home EPO therapy.
- Be trained by the facility to inject EPO or have an appropriate caregiver who is trained to inject EPO.

In addition, the following requirements must be met:

1. Prior to the determination that the patient is a candidate for use of EPO in the home, the patient's hematocrit (or hemoglobin), serum iron, transferrin saturation, serum ferritin, and blood pressure must be measured.

2. The patient's physician or facility must develop an appropriately designed protocol to provide to the patient for the safe and effective use of the drug. The protocol must include monitoring of blood pressure.

3. The patient must be capable of performing self-administration of EPO, be able to learn aseptic technique, and be able to read the drug labeling, or must have a primary care-giver who can perform these tasks.

4. The patient must be able to adhere to a disciplined medical regimen.

B. Patient Care Plan

To ensure adequate monitoring of home EPO therapy, we have amended § 405.2137(b), to add a new paragraph (b)(7) which requires that the patient plan for a home dialysis patient who uses EPO in the home include the following:

- Review of diet and fluid modifications to monitor iron stores and hyperkalemia related to dietary indiscretion or elevated blood pressure.
- Reevaluation of the patient's dialysis prescription taking into account

the patient's increased appetite and red blood cell volume.

- A method of teaching the patient to identify the signs and symptions of hypotension and hypertension.
- The decrease or discontinuance of EPO if hypertension is uncontrolled.
- A method of followup on blood work and a means to keep the physician informed of the results.

C. Other Concerns

We understand that this drug may be abused. In order to minimize possible abuse, we have revised § 405.2163(g)(4) to require that the physician or facility ensure that "on hand" EPO is limited to a two-month supply. We request the public's views and suggestions regarding this policy, and any other issues including whether it is necessary to impose special storage requirements for safe-keeping of EPO, considering that the drug contains no preservatives, and that its presence might entail possible risks to any children in the household.

D. Other Minor Changes

The following minor changes were also required, to codify in the rules the coverage of EPO and to reflect the expansion of that coverage to include EPO used by home dialysis patients. As explained in the "Background" section of this preamble, previous coverage of EPO was implemented through general instructions issued by HCFA, but not reflected in the rules.

Section 410.10.

We have amended this section to show that EPO used at home by home-dialysis patients is now covered as one of the services included in "Medical and other health services", as defined in section 1861(s) of the Social Security Act.

Section 410.29.

We have amended this section to show that EPO may be covered as an exception to the general exclusion of drugs that may be self-administered.

Section 410.50.

We have amended this section to snow that medically necessary drugs and biologicals are covered as part of institutional dialysis services furnished in a dialysis facility. (EPO covered as a dialysis facility service is paid as add-on to the facility payment rate.)

Section 410.52.

We have amended this section to show that EPO for use by competent patients in the home is now included in the scope of ESRD services furnished in the patient's home.

Section 413.170(a)(1). We have amended this section to update the cross references to the ESRD program coverage provisions in the regulations.

Section 413.170(c). We have added a new paragraph (c)(6) to describe reimbursement for EPO when it is furnished by a Medicare approved dialysis facility or a supplier of home dialysis equipment and supplies.

Section 414.300 and 414.335. We have added a new paragraph (d) to § 414.300 and a new § 414.335 to describe reimbursement for EPO when the beneficiary deals directly with a supplier of home dialysis equipment and supplies (method II).

IV. Waiver of Proposed Rulemaking and of Delayed Effective Date

In adopting substantive rules, we ordinarily publish a notice of proposed rulemaking with a 60-day period for public comment as required under section 1871(b)(1) of the Act. The notice of proposed rulemaking identifies the legal authority or the administrative necessity for the proposed rule. It also discusses the substance and the reasons for the particular provisions being proposed. However, section 4207(j) of OBRA '90 authorizes issuance of interim final regulations (without prior notice and comment) to implement any of the OBRA provisions that affect the Medicare and Medicaid programs. We are using that authority to publish this as an interim final rule, since coverage of EPO for use at home by home dialysis patients cannot be implemented properly without the criteria for selection of patients and the rules and procedures necessary to ensure that the treatment is safe and effective. Since Congress provided that coverage of EPO for home use go into effect on July 1, 1991, we find that, once these rules are published, to further delay the effective date would serve no useful purpose. Medicare will pay for services furnished on and after that date that meet the requirements of this regulation.

V. Response to Comments

Although this is a final rule, we will consider all timely comments and discuss those comments when we amend the rule or make it permanent without changes.

VI. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any regulation that is likely to have an annual impact of $100 or meet other thresholds specified in section 1(b) of the order.

We have determined that a regulatory impact analysis is not required for these rules because they will not have an annual impact of $100 million or more or meet any of the other threshold criteria. However, in the formulation of a final rule, we will prepare a benefit and cost analysis. In this analysis, we will consider the social benefits to Medicare beneficiaries who use EPO at home, and attempt to place a dollar value on the benefits accruing from this provision. Examples of benefits might be savings in travel previously required to obtain EPO, or the ability of the beneficiary to resume employment. To assist us in this analysis, we request public comment on benefits and costs that may be anticipated as a result of this regulation.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each rule, unless the Secretary certifies that particular rule will not have a significant economic impact on substantial number of small entities, or a significant impact on the operation of a substantial number of small rural hospitals.

The RFA defines "small entity" as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. We also consider all providers and suppliers of services to be small entities. For purposes of section 1102(b) of the Act, we define small rural hospital as a hospital that has fewer than 50 beds, and is located anywhere but in a metropolitan statistical area.

We have not prepared a regulatory flexibility analysis because we have determined, and the Secretary certifies, that these rules will not have a significant economic impact on a substantial number of small entities or a significant impact on the operation of a substantial number of small rural hospitals.

Paperwork Reduction Act

This rule contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney disease,

Laboratories, Medicare, Reporting and record keeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 414

End-stage renal (ESRD), Health professions, Laboratories, Medicare.

42 CFR chapter IV is amended as set forth below:

A. PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

1. The authority citation for subpart U continues to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1295hh, 1395kk, and 1395rr), unless otherwise noted.

2. Section 405.2137 is amended to add a new paragraph (b)(7), to read as follows:

§ 405.2137 Condition: Patient long-term program and patient care plan.

* * * * *

(b) *Standard: Patient care plan.* * * *

(7) For a home dialysis patient who uses EPO in the home, the plan for monitoring home use of EPO must include the following:

(i) A review of diet and fluid modifications to monitor for adequate iron stores and hyperkalemia related to dietary indiscretions or elevated blood pressure.

(ii) A reevaluation of the dialysis prescription taking into account the patient's increased appetite and red blood cell volume.

(iii) A method for followup on blood tests and a mechanism for keeping the physician informed of the results.

(iv) A method for teaching the patient to identify the signs and symptoms of hypotension and hypertension.

(v) The decrease or discontinuance of EPO if hypertension is uncontrollable.

3. Section 405.2163 is amended to add a new paragraph (g), to read as follows:

§ 405.2163 Condition: Minimal service requirements for a renal dialysis facility or renal dialysis center.

* * * * *

(g) *Use of EPO at home: Patient selection.* The dialysis facility, or the physician responsible for all dialysis-related services furnished to the patient, must make a comprehensive assessment of the patient that includes the following:

(1) *Pre-selection monitoring.* The patient's hematocrit (or hemoglobin), serum iron, transferrin saturation, serum ferritin, and blood pressure must be measured.

(2) *Conditions the patient must meet.* The patient must meet the following conditions:

(i) Be a home dialysis patient.

(ii) Have a hematocrit (or comparable hemoglobin level) of less than 30 percent unless there is medical documentation showing the need for EPO despite a hematocrit (or comparable hemoglobin level) of higher than 30 percent. (Severe angina, severe pulmonary disease, or severe hypotension may require EPO to prevent adverse symptoms despite higher hematocrit or hemoglobin levels.)

(iii) Be able to adhere to a disciplined medical regime.

(iv) Be under the care of a physician who is responsible for all dialysis-related services, who prescribes the EPO and monitors the EPO home therapy, and be under the care of a renal dialysis facility that establishes the plan of care and monitors the progress of the home EPO therapy.

(3) *Conditions the patient or the patient's caregiver must meet.* The patient or a caregiver who assists the patient in performing self-dialysis, must meet the following conditions:

(i) Be trained by the facility to inject EPO and capable of carrying out the procedure.

(ii) Be capable of reading and understanding drug labelling.

(iii) Be trained in, and capable of observing, aseptic techniques.

(4) *Protocol.* The patient's physician or facility must develop an appropriate protocol to give to the patient to ensure safe and effective home use of EPO. The protocol must include monitoring of blood pressure. The physician or facility must ensure that "on hand" EPO is limited to a two-month supply.

B. PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102, 1832, 1833, 1835, 1861(r), (s), and (cc), 1871, and 1881 of the Social Security Act. (42 U.S.C. 1302, 1395k, 13951, 1395n, 1395x(r), (s), and (cc), 1395hh, and 1395rr).

Subpart B—Medical and Other Health Services

§ 410.10 [Amended]

2. In § 410.10, paragraph (k), the phrase "erythropoietin (EPO) for home dialysis patients competent to use the drug," is inserted immediately after "equipment,".

§ 410.29 [Amended]

3. In § 410.29, paragraph (a), the phrase "and except for EPO," is added immediately after "factors."

4. In § 410.50, the introductory text is republished, paragraph (a) is revised, and a new paragraph (d) is added, to read as follows:

§ 410.50 Institutional dialysis services and supplies: Scope and conditions.

Medicare Part B pays for the following institutional dialysis services and supplies if they are furnished in approved ESRD facilities:

(a) All services, items, supplies, and equipment necessary to perform dialysis and drugs medically necessary in the treatment of the patient for ESRD.

* * * * *

(d) Erythropoietin (EPO) and its administration.

5. In § 410.52, the introductory text of paragraph (a) is republished, and a new paragraph (a)(4) is added, to read as follows:

§ 410.52 Home dialysis services, supplies, and equipment: Scope and conditions.

(a) Medicare Part B pays for the following services, supplies, and equipment furnished to an ESRD patient in his or her home:

* * * * *

(4) Erythropoietin (EPO) for use at home by a home dialysis patient if it has been determined, in accordance with § 405.2163 of this chapter, that the patient is competent to use the drug safely and effectively.

* * * * *

C. PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 13951(a), 1395x(5), 1395hh, 1395rr, 1395tt, and 1395ww).

§ 413.170 [Amended]

2. Section 413.170 is amended as follows:

a. In paragraph (c), a new paragraph (c)(6) is added, to read as follows:

(c) *Prospective rates for hospital-based and independent ESRD facilities.* * * *

(6) *Erythropoietin (EPO).* (i) When EPO is furnished to an ESRD patient by a Medicare approved ESRD facility or a supplier of home dialysis equipment and supplies, payment is based on the amount specified in § 413.170(c)(5)(iii).

(ii) The payment is made only on an assignment basis, that is, directly to the facility or supplier, which must accept, as payment in full, the amount that HCFA determines.

(iii) HCFA determines the payment amount in accordance with the following rules:

(A) The amount is prospectively determined.

(B) HCFA publishes annually a Federal Register notice, indicating whether an update in the EPO payment amount is appropriate and requesting public comment.

(C) Any increase in this amount does not exceed the percentage increase (if any) in the implicit price deflator for gross national product (as published by the Department of Commerce) for the second quarter of the preceding year over the implicit price deflator for the second quarter of the second preceding year.

(D) HCFA sets a single amount to be paid nationwide to hospital-based and independent dialysis facilities and to suppliers of home dialysis equipment and supplies, regardless of the location of the facility, supplier, or patient.

(E) The Medicare payment is subject to the Part B deductible and coinsurance.

D. PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1833(a), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 13951(a), 1395hh, and 1395).

2. Section 414.300 is amended to add a new paragraph (d) to read as follows:

§ 414.300 Scope of subpart.

* * * * *

(d) Erythropoietin (EPO) furnished by a supplier of home dialysis equipment and supplies to a home dialysis patient for use in the home.

3. A new § 414.335 is added, to read as follows:

§ 414.335 Payment for EPO furnished to a home dialysis patient for use in the home.

(a) Payment for EPO used at home by a home dialysis patient is made only to either a Medicare approved ESRD facility or a supplier of home dialysis equipment and supplies.

(b) Payment is made in accordance with the rules set forth in § 413.170 of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 25, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: July 24, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-20940 Filed 9-3-91; 8:45 am]

BILLING CODE 4120-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3992-5]

48 CFR Parts 1516 and 1552

Acquisition Regulation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document finalizes a rule on the payment of fee on cost-reimbursement, term-form contracts. The effect of this action is to change, in many instances, the current procedure of making provisional payments of fee as a percentage of costs incurred, to a method of payment based on the number of direct hours performed in relation to the total level of effort in the contract. This action provides for a more equitable procedure for the provisional payment of fee.

EFFECTIVE DATE: This rule is effective October 4, 1991.

FOR FURTHER INFORMATION CONTACT: Joe Nemargut at (202) 382-5019 or FTS 382-5019.

SUPPLEMENTARY INFORMATION:

A. Background

This regulation was published as a proposed rule in the Federal Register on December 29, 1989. Three comments were received. Those comments and the EPA response are summarized below.

Two commenters stated the proposed rule would increase contractor costs without commensurate benefits to EPA. The EPA believes there should be no additional costs to a contractor in implementing the rule, which will require only a minor change to a contractor's method of calculating the fee payable.

Two commenters stated the rule conflicts with the intent of the Federal Acquisition Regulation (FAR) to promote uniform policies and procedures for acquisition of goods and services not unique to an agency. While the EPA agrees that the use of cost-reimbursement type contracts is not unique to EPA, existing FAR guidance does not prescribe the methods for contractors to receive provisional fee payments. Therefore, this regulation provides policies and procedures necessary for EPA to implement the FAR, as permitted under FAR 1.302.

One commenter asserted this rule contradicts the prompt payment initiatives of the Congress and the Office of Management and Budget by delaying payments to contractors. Under many cost-reimbursement contracts, the Agency has contracted for a specified level-of-effort stated as an estimated number of hours. This rule will assure that provisional payments of fee are made on the same basis as the contract terms. This rule should in no way delay a contractor's timely receipt of contract financing payments.

A commenter contends the rule would act as a roadblock to improving contractor performance by penalizing the use of labor-saving devices. This should not be the case. Prior to contract award, contractors are evaluated on their technical approach, which may include their use of labor-saving methods. For award-fee contracts, the amount of fee awarded is based on the overall quality of contractor performance. This generally includes an evaluation of the contractor's use of innovative approaches designed to reduce the overall cost to the Government. However, in response to this comment, the final rule permits the Contracting Officer to omit this clause if its inclusion might be detrimental to overall contractor performance.

One commenter suggested that a provision be added to this rule requiring that fixed fee be settled at the end of the contract base year and for each option period thereafter, with the withholding provisions modified accordingly. This is outside the scope of the proposed changes.

B. Executive Order 12291

OMB Bulletin No. 85-7, dated December 14, 1984, establishes the requirements for Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring OMB review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The EPA certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule merely initiates a more equitable policy for the provisional payment of fee more directly related to the percentage of work completed.

List of Subjects in 48 CFR Parts 1516 and 1552

Government Procurement, Types of Contracts, Solicitation Provisions and Contract Clauses.

For the reasons set out in the preamble, parts 1516 and 1552 of title 48 Code of Federal Regulations, are amended as follows:

1. The authority citation for Parts 1516 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Subpart 1516.3 is amended to add section 1516.301–70 to read as follows:

1516.301–70 Payment of fee.

The policy of EPA for cost-reimbursement, term form contracts is to make provisional payment of fee (i.e. the fixed fee on cost-plus-fixed-fee type contracts or the base fee on cost-plus-award-fee type contracts) on a percentage of work completed basis, when such a method will not prove detrimental to proper contract performance. Percentage of work completed is the ratio of the direct labor hours performed in relation to the direct labor hours set forth in the contract in clause 1552.212–70, "Level of Effort—Cost Reimbursement Term Contract." Provisional payment of fee will remain subject to withholding provisions, such as 48 CFR 52.216–8, Fixed Fee.

3. Section 1516.307 is amended to designate the existing paragraph as (a) and add a paragraph (b) to read as follows:

1516.307 Contract clauses.

* * * * *

(b) The Contracting Officer shall insert the clause at 1552.216–74, Payment of Fee, in solicitations and contracts where a cost-reimbursement term form contract is contemplated, unless the Contracting Officer determines that such a provision would be detrimental to ensuring proper contract performance.

4. Part 1552 is amended to add section 1552.216–74 to read as follows:

1552.216–74 Payment of fee.

As prescribed in 1516.307(b), insert the following clause:

Payment of Fee (May 1991)

(a) The term "fee" in this clause refers to either the fixed fee under a cost-plus-fixed-fee type contract, or the base fee under a cost-plus-award-fee type contract.

(b) The Government will make provisional fee payments on the basis of percentage of work completed. Percentage of work completed is the ratio of direct labor hours performed to the direct labor hours set forth in clause 1552.212–70, "Level of Effort—Cost-Reimbursement Term Contract."

(end of clause)

Dated: August 26, 1991.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 91–21138 Filed 9–3–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. T84–01; Notice 26]

RIN 2127–AD53

Final Listing of High Theft Lines for 1992 Model Year; Motor Vehicle Theft Prevention Standard

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

ACTION: Final rule; technical amendment.

SUMMARY: The purpose of this notice is to (1) report the results of this agency's actions for determining which car lines are subject to the marking requirements of the motor vehicle theft prevention standard for the 1992 model year and, (2) publish a list of those car lines. NHTSA has previously published lists of the car lines that were selected as high theft car lines for prior model years, beginning with the 1987 model year. The list in this notice includes all of the car lines in the previous lists, as well as four new lines that were introduced for the 1992 model year and that have been selected as likely high theft lines. In addition, this listing shows the five additional lines that have standard equipment anti-theft devices and have been granted exemptions from the requirements of the theft prevention standard beginning with the 1992 model year. Two more car lines have been exempted in part and are required to have only their engines and transmissions marked.

This final listing for the 1992 model year is intended to inform the public, particularly law enforcement groups, of the car lines that are subject to the marking requirements of the theft prevention standard for the 1992 model year.

EFFECTIVE DATE: This listing applies to the 1992 model year. The amendment made by this notice is effective September 4, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION: The Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541, sets forth requirements for inscribing or affixing identification numbers onto covered original equipment major parts, and the replacement parts for those original equipment parts, on all vehicles in lines selected as high theft lines.

Section 603(a)(2); of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2023(a)(2); hereinafter "the Cost Savings Act") specifies that NHTSA shall select the high theft lines, with the agreement of the manufacturer, if possible. Section 603(d) of the Cost Savings Act (15 U.S.C. 2023(d)) provides that once a line has been designated as a high theft line, it remains subject to the theft prevention standard unless that line is exempted under section 605 of the Cost Savings Act (15 U.S.C. 2025). Section 605 provides that a manufacturer may petition to have a high theft line exempted from the requirements of part 541, if the line is equipped as standard equipment with an antitheft device. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with Part 541 in reducing and deterring motor vehicle thefts.

The agency annually publishes the names of the lines which were listed as high theft lines for one or more previous model years and of the lines which are being listed for the first time and will be subject to the theft prevention standard beginning with the next model year. This notice is intended to inform the public, particularly law enforcement groups, of the high theft car lines for the 1992 model year. It also identifies those car lines that are exempted from the theft prevention standard for the 1992 model year because of standard equipment anti-theft devices.

The list includes the four new 1992 car lines selected by the agency in accordance with procedures published in 49 CFR part 542 as likely to be high theft lines. The list also includes all those lines that were selected as high theft lines and listed for prior model years.

The notice also includes seven high theft lines exempted by the agency, beginning from MY 1992, from the parts marking requirements of part 541. Five of these car lines are exempted in full from part 541, and two are exempted in part, with the manufacturer required to mark only the engines and transmissions of these vehicles.

Notice and comment; effective date. The car lines listed as being subject to the standard have been selected as high theft lines in accordance with the procedures of 49 CFR part 542 and section 603 of the Cost Savings Act. Under these procedures, manufacturers evaluate new car lines to conclude whether those new lines are likely to have high theft rates. Manufacturers submit these evaluations and conclusions to the agency, which makes an independent evaluation, and, on a preliminary basis, determines whether the new line should be subject to parts marking. NHTSA informs the manufacturer in writing of its evaluations and determinations, together with the factual information considered by the agency in making them. The manufacturer may request the agency to consider these preliminary determinations. Within 60 days of the receipt of the request, NHTSA makes its final determination. NHTSA informs the manufacturer by letter of these determinations and its response to the request for reconsideration. If there is no request for reconsideration, the agency's determination becomes final 45 days after sending the letter with the preliminary determination. Each of the new car lines on the high theft list is the subject of a final determination.

Similarly, the car lines listed as being exempt from the standard have been exempted in accordance with the procedures of 49 CFR part 543 and section 605 of the Cost Savings Act.

Therefore, NHTSA finds for good cause that notice and opportunity for comment on this listing are unnecessary. Further, public comment on the listing of selections and exemptions is not contemplated by title VI, and is unnecessary after the selections and exemptions have been made in accordance with the statutory criteria.

For the same reasons, since this revised listing only informs the public of previous agency actions, and does not impose any additional obligations on any party, NHTSA finds for god cause that the amendment made by this notice should be effective as soon as it is published in the **Federal Register**.

Regulatory Impacts

NHTSA has determined that this rule listing the car lines that are high theft and are subject to the requirements of the vehicle theft prevention standard and the car lines that are exempt from the standard is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of Department of Transportation regulatory policies and procedures. As noted above, the selections have previously been made in accordance with the provisions of the Cost Savings Act, and the manufacturers of the selected lines have already been informed that those lines are subject to the requirements of part 541 for the 1992 model year. Further, this listing does not actually exempt lines from the requirements of part 541; it only informs the general public of all such previously granted exemptions. Since the only purpose of this final listing is to inform the public of prior agency action for the 1992 model year, a full regulatory evaluation has not been prepared.

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this notice is simply to inform the public of those lines that are subject to the requirements of Part 541 for the 1992 model year. The agency believes that listing of this information will not have any economic impact on small entities.

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule, and determined that it will not have any significant impact on the quality of the human environment.

Finally, this action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

PART 541—[AMENDED]

In consideration of the foregoing, 49 CFR part 541 is amended as follows:

1. The authority citation for part 541 continues to read as follows:

Authority: 15 U.S.C. 2021–2024 and 2026; delegation of authority at 49 CFR 1.50

2. Appendix A of part 541 is revised to read as follows, appendix A–I is revised to read as follows, and appendix A–II is revised to read as follows:

Manufacturer	Subject lines
Alfa Romeo	Milano 161.
	164.
BMW	3-Car line./[1]
	5-Car line.
	6-Car line.
Chrysler	Chrysler Executive Sedan/Limousine.
	Chrysler Fifth Avenue/ Newport.
	Chrysler Laser.
	Chrysler LeBaron/Town & Country.
	Chrysler LeBaron GTS.
	Chrysler's TC.
	Chrysler New Yorker Fifth Avenue.
	Dodge Aries.
	Dodge Daytona.
	Dodge Diplomat.
	Dodge Lancer.
	Dodge 600.
	Dodge Stealth.
	Eagle Talon.
	Plymouth Caravelle.
	Plymouth Laser.
	Plymouth Gran Fury.
	Plymouth Reliant.
Consulier	Consulier GTP.
Ferrari	Mondial 8.
	308.
	328.
Ford	Ford Mustang.
	Ford Thunderbird.
	Ford Probe.
	Mercury Capri.
	Mercury Cougar.
	Lincoln Continental.
	Lincoln Mark.
	Lincoln Town Car.
	Merkur Scorpio.
	Merkur XR4Ti.
General Motors	Buick Electra.
	Buick LeSabre.
	Buick Reatta.
	Buick Regal.
	Buick Riviera.
	Cadillac Eldorado.
	Cadillac Seville.
	Chevrolet Nova.
	Chevrolet Lumina.
	Oldsmobile Cutlass Supreme.
	Oldsmobile Delta 88.[1]
	Oldsmobile Toronado.
	Pontiac Fiero.
	Pontiac Grand Prix.
	Geo Prizm.
	Geo Storm.
	Saturn Sports Coupe.
Isuzu	Isuzu Impulse.
	Isuzu Stylus.
Jaguar	XJ.
	XJ–6.
	XJ–40.
Lotus	Lotus Elan.

Manufacturer	Subject lines
Maserati	Biturbo.
	Quattroporte.
	228.
Mazda	GLC.
	626.
	MX-6.
	MX-5 Miata.
	MX-3.[1]
Mercedes-Benz	190 D/E.
	250D-T.
	260 E.
	300 CE.
	300 D/E.
	300 SE.
	300 SL.
	300 TD.
	300 TE.
	300 SDL.
	300 SEL.
	380 SEC/500 SEC.
	380 SEL/500 SEL.
	380 SL.
	420 SEL.
	500 SL.
	560 SEL.
	560 SEC.
	560 SL.
Mitsubishi	Cordia.
	Tredia.
	Eclipse.
	3000GT.
Peugeot	405.
Porsche	924S.
Reliant	SS1.
Saab	900.
Subaru	XT.
	SVX.[1]
Toyota	Camry.
	Celica.
	Corolla/Corolla Sport.
	MR2.
	Starlet.
Volkswagen	Audi Quattro.
	Volkswagen Cabriolet.
	Volkswagen Rabbit.
	Volkswagen Scirocco.
	Volkswagen Corrado.

[1] Car lines added in Model Year 1992.

APPENDIX A-I.—HIGH-THEFT LINES WITH ANTITHEFT DEVICES THAT ARE EXEMPTED FROM THE REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

Manufacturer	Exempted lines
Austin Rover	Sterling.
BMW	7-Car line.
	8-Car line.[1]
Chrysler	Chrysler Conquest.
	Imperial.
General Motors	Cadillac Allante.
	Chevrolet Corvette.
Honda	Acura NS-X.
	Acura Legend.
	Acura Vigor.[1]
Isuzu	Impulse (MYs 1987–1991).
Mazda	929.
	RX 7.
Mitsubishi	Galant.
	Starion
Nissan	Maxima.
	300ZX.
	Infiniti M30.
	Infiniti Q45
Porsche	911.

APPENDIX A-I.—HIGH-THEFT LINES WITH ANTITHEFT DEVICES THAT ARE EXEMPTED FROM THE REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543—Continued

Manufacturer	Exempted lines
	928.
	968.[1]
Saab	9000.
Toyota	Supra.
	Cressida.
	Lexus LS400.
	Lexus ES250.
	Lexus SC300.[1]
	Lexus SC400.[1]
Volkswagen	Audi 5000S.
	Audi 100.
	Audi 200/S4.
Vivo	480ES.

[1] Lines exempted in full from the requirements of part 541 pursuant to 49 CFR part 543, beginning from MY 1992.

APPENDIX A-II.— HIGH THEFT LINES WITH ANTITHEFT DEVICES THAT ARE EXEMPTED IN PART FROM THE PARTS—MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

Manufacturer	Exempted lines	Parts marked
General Motors	Chevrolet Camaro.	Engine, transmission.
	Pontiac Firebird	Engine, transmission.
	Cadillac Deville-Fleetwood.	Engine, transmission.
General Motors	Oldsmobile 98	Engine, transmission.
	Buick Park Avenue [1].	Engine, transmission.
	Pontiac Bonneville [1].	Engine, transmission.

[1] Lines exempted in part from the requirements of part 541 pursuant to 49 CFR part 543, beginning in MY 1992.

Issued on: August 28, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-21045 Filed 9-3-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 910775-1210]

General Provisions; Threatened Fish and Wildlife; Extension of Applicability of Sea Turtle Conservation Requirements for Shrimp Trawlers off the Southeastern Atlantic Coastal States

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule requiring shrimp trawlers in Federal or state waters inshore or offshore of the southeastern Atlantic coastal states to comply with the Federal sea turtle conservation requirements from September 1, 1991, through April 30, 1992 (hereinafter the fall, winter, and spring of 1991–1992), as well as from May 1 through August 31 of each year as presently required (52 FR 24244, June 29, 1987). Under this rule, shrimp trawlers 25 feet (7.6 meters (m)) or longer in length, trawling in offshore waters from North Carolina through Florida (NMFS statistical zones 24–36) must use NMFS-approved turtle excluder devices (TEDs) in their nets during the fall, winter, and spring of 1991–1992 as well as from May 1 through August 31 of each year. Shrimp trawlers of all sizes trawling in inshore waters and shrimp trawlers less than 25 feet (7.6 m) in length trawling in offshore waters must either limit their tow times to no longer than 90 minutes or use NMFS-approved TEDs during the fall, winter, and spring of 1991–1992 as well as from May 1 through August 31 of each year. This rule does not preempt any state regulations imposing more stringent sea turtle protection requirements in state waters.

This rule is issued because there is a significant risk to the well-being of threatened and endangered sea turtles from anticipated shrimp trawling activities in Federal or state waters inshore or offshore of the southeastern Atlantic coastal states from September 1, 1991, through April 30, 1992. The intended effect of this rule is to reduce the mortality of turtles taken incidental to shrimp trawling when the Federal sea turtle conservation measures otherwise would not be in effect in waters inshore or offshore North Carolina through the Atlantic coast of Florida.

EFFECTIVE DATE: This rule is effective on September 1, 1991.

ADDRESSES: Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams (301–427–2322) or Charles Oravetz (813–893–3366).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (ESA). Incidental capture by shrimp trawlers has been documented for

loggerhead, Kemp's ridley, green, leatherback, and hawksbill turtles in Federal or state waters inshore or offshore of the southeastern Atlantic and Gulf of Mexico coastal states. NMFS estimated that, prior to 1987, commercial shrimp trawlers killed at least 11,000 sea turtles annually in those waters (Henwood and Stuntz, 1987). A more recent review of existing information by the National Academy of Sciences (NAS) found that the NMFS estimates were conservative, and that the number of turtles killed by shrimp trawlers could be as high as 44,000 each year (NAS, 1990).

Under section 9 of the Endangered Species Act (ESA) and regulations issued by NMFS in 1987 amending 50 CFR parts 217, 222, and 227 (52 FR 24244, June 29, 1987) (1987 sea turtle conservation regulations), certain activities with respect to threatened or endangered sea turtles occurring in United States waters, including the taking of such turtles, are prohibited. The 1987 sea turtle conservation regulations provided a number of exceptions to the prohibition on taking. To qualify for an exception, shrimp trawlers in Federal or state waters inshore or offshore of the southeastern Atlantic and Gulf of Mexico coastal states must employ specified measures to reduce the mortality of sea turtles incidentially taken (sea turtle conservation requirements).

Seasonal Conservation Requirements in the Atlantic Area and Effect on Sea Turtles

Since the sea turtle conservation regulations have been in effect, evidence suggests that sea turtle mortalities associated with shrimp trawling have been significantly reduced. However, those regulations do not require shrimp trawlers in most Federal or state waters inshore or offshore of the southeastern Atlantic coastal states to comply with the Federal sea turtle conservation measures from September 1 through April 30 of each year. When sea turtle conservation measures (use of approved TEDs or limited tow times) are not employed, sea turtle mortalities are likely wherever trawling activities occur and sea turtles are present.

The sea turtle conservation regulations require vessels 25 feet (7.6 m) or longer trawling for shrimp in Atlantic waters offshore of North Carolina, South Carolina, Georgia, and Florida to use approved TEDs from May 1 through August 31 of each year. Vessels 25 feet (7.6 m) or longer trawling for shrimp in the Cape Canaveral Area of Florida are required to use approved TEDs year-round. For Atlantic Area inshore waters, vessels are required to limit tow times to 90 minutes or less or use approved TEDs from May 1 through August 31 each year. The separation line between offshore and inshore waters is the 72 COLREGS (International Regulations for Preventing Collisions at Sea 1972) demarcation line. This line is depicted or noted on NOAA Coast Charts of 1:80,000 scale for the Atlantic and Gulf of Mexico and is described in 33 CFR part 80.

NMFS recently estimated annual turtle captures and mortalities by shrimp trawlers under the existing sea turtle conservation regulations assuming 100 percent compliance and 100 percent mortality of comatose turtles recovered (Henwood, *et al.*, 1990). NMFS estimates that in the offshore Atlantic Area, 2,204 sea turtles are killed annually in shrimp trawls. Of these, an estimated 2,126 are killed annually in shrimp trawls during the months of September through April, when TED use or limited tow times are not required. NMFS estimates that in the inshore Atlantic Area, 996 turtles are killed annually in shrimp trawls under the 90-minute tow-time limitation and present seasonality of the conservation requirements. Thus, assuming 100 percent compliance with the regulations, and 100 percent mortality of comatose turtles recovered, an estimated 3,200 turtles are killed annually in U.S. Atlantic shrimp trawl fisheries under the current sea turtle conservation regulations. It should be noted, however, that enforcement of the sea turtle conservation regulations indicates less than 100 percent compliance.

Studies and recent events show a strong correlation between sea turtle mortality and shrimp and other bottom trawling effort along the Atlantic coast. For instance, high levels of turtle strandings in the fall and spring when TEDs or restricted tow times are not required have consistently been reported from North Carolina, South Carolina, Georgia and Florida.

Murphy and Hopkins-Murphy (1989) found that the total number of sea turtle strandings in South Carolina after the opening of the shrimping season was five times larger than the number of strandings prior to the opening of the season. The increase in the number of strandings was correlated to the shrimp trawl fishery, rather than to yearly and seasonal fluctuations, because the data came from openings and closings on different dates in different years. Although this does not demonstrate a causal relationship, the large increases in strandings after the opening of the shrimping season year after year strongly suggests that shrimp trawling is responsible for the increased turtle mortality.

Sea turtle stranding data from North Carolina also show a pattern that closely tracks the activities of the shrimp trawl fishery. Sea turtle strandings increase in summer south of Cape Hatteras when the shrimp fleet is active (Street, 1987). South of Cape Hatteras, 86 percent of the strandings during 1980–1986 occurred in areas where shrimp trawling took place from May through September. This suggests that shrimp trawling was the primary cause of the strandings.

Between October 1 and December 31, 1988, 171 dead turtles washed ashore in Georgia and Florida, during a period of heavy shrimping activity. Because of this record number of strandings, NMFS issued emergency regulations requiring the use of TEDs in the Atlantic inshore and offshore waters of southern Georgia and Florida in statistical zones 29 and 30 (54 FR 7773, Feb. 23, 1989). At that time, 70 Kemp's ridley turtles, a record number, and significant numbers of loggerhead and leatherback turtles stranded along the coastal beaches. These strandings were much more numerous than in the same area in 1987. The increased number of strandings was shown to coincide with an increased level of shrimp trawling (Schroeder and Maley, 1989).

In April 1991, 93 sea turtles were reported stranded in Georgia just prior to May 1, the starting date of the season when sea turtle conservation measures must be employed. Thirty strandings were reported in Georgia from May 1 through May 17, and most of the carcasses were in an advanced state of decomposition, indicating the sea turtles died prior to May 1.

Actions by Atlantic States

Florida, Georgia, and South Carolina have adopted regulations that are at least as restrictive as the Federal sea turtle conservation regulations. Florida requires TEDs year-round in all State waters on most trawls, and Georgia requires use of TEDs from April through December in waters south of 31°20'N. latitude. South Carolina's regulations are patterned after the Federal regulations, except that TEDs are required to be used in certain inshore areas where the Federal regulations otherwise would allow, as an alternative, limited tow times of 90 minutes.

Directors of the state resource management agencies in Florida, Georgia and South Carolina have repeatedly requested that NMFS revise the sea turtle conservation regulations

to require compliance with Federal sea turtle conservation measures for an expanded time period.

Comments and Responses on the Proposed Rule

NMFS published the rule adopted here today as a proposed rule on August 1, 1991 (56 FR 36753). NMFS received 15 sets of comments on the proposed rule. Only one comment (from the President of the Northern Chapter of the South Carolina Shrimpers Association) opposed the proposed extension of the time period when compliance with the sea turtle conservation measures would be required. The other comments received ranged from full support of the proposal to that it be modified to eliminate: (1) The above discussed availability of tow-time limits as an alternative to the use of TEDs; and (2) exemptions in the current regulations for the royal red and rock shrimp fisheries of the Canaveral and Atlantic Areas. Significantly, both the State of Florida Marine Fisheries Commission and the State of Georgia Department of Natural Resources supported the extension.

Two of the comments received were from representatives of the shrimp trawl fishery industry. The Executive Director of the South Carolina Shrimpers Association, while not opposing the extension, criticized the preamble to the proposed rule for referring to the time period of September 1 through April 30 as the "off season" because it was the "prime season for shrimp." In response, NMFS has dropped all references to this time period as the "off season" from the preamble to the final rule. His comments also objected to a reference in the preamble to the proposed rule to 0.7 percent as the shrimp loss from TED-equipped nets. He noted that losses would be much higher in debris-laden water. In response, NMFS notes that the 0.7 percent loss rate referred to was based on tests under commercial conditions, including water with debris, but using an accelerator funnel in front of the TED. Later in this preamble to the final rule, costs to the industry are discussed. In that discussion, a range of possible shrimp losses is considered. While NMFS has used the 0.7 loss rate figure as an indicator that a 5 percent loss estimate is conservative, the analysis does not presume a loss of only 0.7 percent. However, tests to date indicate that use of accelerator funnels with TED-equipped nets could reduce shrimp loss to a level significantly less than 5 percent. Finally, he refers to the dredging of the Charleston, South Carolina, harbor by the U.S. Army Corps of Engineers and urges NMFS to impose sea turtle conservation measures on all activities which incidentally take sea turtles and not just on shrimp trawling. In response, NMFS notes that it has directed much of its regulatory actions at the shrimp trawl fishery because shrimp trawling kills more sea turtles than all other human activity combined and because effective turtle conservation measures, *i.e.*, TEDs, exist for that activity. Regarding the dredging of Charleston Harbor by the U.S. Army Corps of Engineers, NMFS and the Corps have re-initiated consultation under section 7 of the Endangered Species Act and NMFS is reevaluating new information on turtle abundance in the Charleston Harbor channel. NMFS will issue a new biological opinion with conditions that will minimize the adverse impacts on sea turtles of that dredging.

The President of the Northern Chapter of the South Carolina Shrimpers Association opposed the extension. He alleged, without offering any data, that the extension of the requirements would likely put him and many other shrimpers "out of business." He alleged that few if any sea turtles were taken by South Carolina shrimpers during the fall, winter, and spring when the Federal conservation requirements otherwise would not be in effect. He also was upset that the shrimpers would be blamed for turtle deaths in fact caused by the Corps of Engineers' dredging of Charleston Harbor. He urged that a hearing be held before the extension regulations took effect.

In response, NOAA reiterates that if TEDs or restricted tow times are not required, the potential fall, winter, and spring shrimp trawling activities off South Carolina are likely to result in sea turtle mortalities. These will occur if conservation measures are not required and shrimp trawling takes place when sea turtles are present. Several studies and reports of mass sea turtle stranding events show a strong correlation between sea turtle mortality and shrimp and other bottom trawling effort along the South Carolina coast. For instance, high levels of turtle strandings in the fall and spring when TEDs or restricted tow times are not required have consistently been reported from North Carolina, as well as from South Carolina, Georgia and Florida.

The use of TEDs is an effective and relatively low-cost means of protecting sea turtles while allowing shrimp trawling to continue. The TEDs now in use were developed with the advice and assistance of the shrimping industry. TEDs have been thoroughly tested to determine their effect on shrimp catch. Assuming a catch loss of 5 percent, a figure which recent tests show to be conservative, the economic impacts of extending the May 1 through August 31 sea turtle conservation measures to cover the coming fall, winter, and spring should not force shrimpers "out of business." NMFS responses to the other elements of his comments appear below.

While many of the comments called for elimination of restricted tow times as an allowable alternative to the use of TEDs, NMFS decided to make no changes to the proposed rule at this time. As many of the comments noted, NMFS is considering the proposal of two additional sets of amendments to the sea turtle conservation regulations. The first would make revisions to facilitate enforcement. The second would augment the conservation requirements as recommended by the study conducted by the National Academy of Sciences.

In the context of the second, NMFS is considering proposing the year-round applicability of sea turtle conservation measures in the Atlantic Area as well as proposing the elimination of restricted tow times as an alternative to TED use, and the elimination of the exemption for the rock shrimp fishery. The reason that NMFS did not do this in connection with this present rulemaking was that NMFS did not want to impose such measures without an extended period for public comment and without holding public hearings. Such a public participation process could not be completed until well after September 1. This would have been inconsistent with reducing the significant risk to the well-being of threatened and endangered sea turtles from anticipated shrimp trawling activities in Federal or state waters inshore or offshore of the southeastern Atlantic coastal states from September 1, 1991, through April 30, 1992, when no Federal sea turtle conservation measures otherwise would be in effect. The September 1 date allowed only for a short public comment period and no public hearing. Thus, NMFS believed it more appropriate to propose only that the annual May 1 through August 31 requirements be extended for the coming fall, winter, and spring.

NMFS intends to allow significant periods for public comment and to hold hearings in the Atlantic and Gulf of Mexico fisheries on the two sets of amendments discussed above.

Final Rule

The final rule requires all shrimp trawlers 25 feet (7.6 m) or longer, except those fishing for rock shrimp or royal red shrimp, to use NMFS-approved TEDs while shrimping from September

1, 1991, through April 30, 1992, in the offshore Atlantic Area as defined in the sea turtle conservation regulations. Shrimp trawlers in inshore waters, or shrimp trawlers less than 25 feet (7.6 m) in length not using a NMFS-approved TED in each net, are required to limit each tow time to 90 minutes during this period in the Atlantic Area. The rule has no effect on the requirements to comply with these measures during May 1 through August 31 of each year.

NMFS prepared a supplemental regulatory impact review for the proposed rule which concluded that, if adopted, it would not have a significant economic impact on the Atlantic commercial shrimp trawling industry. Under the 1987 sea turtle conservation regulations, shrimpers are currently required to use TEDs or restricted tow times from May 1 through August 31 in the Atlantic Area, and all year in the Cape Canaveral Area. Thus shrimpers already have the necessary gear purchased and installed in their nets, and they are familiar with the requirements of the regulations. Further, this regulation would not change the number of shrimp trawlers affected by these conservation requirements.

Because shrimpers required to use TEDs under the 1987 sea turtle conservation regulations have already purchased them, the only additional associated costs will be replacement of used TEDs and any loss in shrimp catch resulting from TED use. NMFS has assumed a 2-year useful life for a TED. The 2-year life takes into consideration the probability of losing a net and hence a TED when it is still serviceable. It also takes into account the cost of repairing TEDs.

Thus, the costs to shrimpers of this final rule will likely increase somewhat because of the cost associated with replacing TEDs that will be used year-round rather than only from May 1 through August 31. NMFS has estimated that approximately 10,695 TEDs (including spares) are used by 2,992 shrimp trawlers in the Atlantic Area under the current regulations (NMFS, Feb. 1987). NMFS has estimated that the increase in annual operating costs to shrimp trawlers to install and use TEDs is between 0.1 and 18.2 percent, with the largest percentage increases being borne by small trawlers with relatively low operating costs.

Changes in shrimp catch by individual shrimpers are difficult to predict. They are affected by the type of TED used, season fished, area fished, and the skill of the fisherman. In promulgating the 1987 sea turtle conservation regulations, NMFS estimated a range in catch loss by shrimp trawlers of zero to 5 percent. This was based on extensive testing of the NMFS TED and limited testing of other TEDs.

NMFS estimated that the annual gross revenue for a shrimp trawler was between $25,414 and $173,072. A 5 percent loss in shrimp catch would result in a loss in annual gross revenue ranging from $1,271 to $8,654 (NMFS, Feb. 1987). NMFS recently completed a study in cooperation with the shrimp industry to determine the impacts of using a NMFS-approved TED on commercial shrimp trawlers operating in the U.S. Atlantic and Gulf of Mexico. The results of this study will be used in a comprehensive economic analysis of the impact of TEDs on the shrimp industry. However, the results of comparisons of standard and TED-equipped nets with accelerator funnels (Renaud, *et al.*, 1990) indicate use of a 5 percent loss rate for TED equipped nets with accelerator funnels to be conservative.

NMFS finds that the present situation poses a significant risk to the well-being of endangered and threatened sea turtles in the waters of the Atlantic Area, that shrimpers participating in the fishery already use NMFS-approved TEDs, and that they will not have to purchase new TEDs to comply with the new requirements. Therefore, there is good cause to make this rule effective as of September 1 without a 30-day delay in effective date as is otherwise required under 553(d) of the Administrative Procedure Act.

Classification

The Assistant Administrator determined that this rule is not a major rule requiring preparation of a regulatory impact analysis under E.O. 12291. The basic regulations which this rule amend were determined not to be major.

An environmental impact statement (EIS) (NMFS, 1978) prepared for the listing of three species of sea turtles, the green, loggerhead, and olive ridley, also addressed the development of gear and procedures to reduce the incidental take and mortality of sea turtles in shrimp trawls. An environmental assessment that described a voluntary program to encourage the use of TEDs was prepared in 1983. A supplemental EIS covering the mandatory TED and tow-time requirements was prepared in 1987 (NMFS, June 1987). This rule extends the requirements for TED use and restricted tow times in Federal or state waters inshore or offshore of the southeastern Atlantic coastal states for the fall, winter, and spring of 1991–1992 and will not result in a significant change in the environmental impact statements previously prepared for the TED requirements and, thus, is categorically excluded by NOAA Directive 02-10 from the requirement to prepare an environmental assessment.

In the final rule that implemented the sea turtle conservation regulations (52 FR 24244, June 29, 1987), NOAA concluded that, to the maximum extent practicable, the regulations were consistent with the coastal zone management programs of each of the southeastern states that has an approved program under the Coastal Zone Management Act. Since this rule does not directly affect the coastal zone in a manner not already fully evaluated in the initial consistency determination, a new consistency determination is not required. Neither this rule nor the ESA precludes any state from adopting more stringent sea turtle protection measures applicable to the waters of that state.

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

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

References

Henwood, T.A., W.E. Stuntz, and N.B. Thompson. 1991. Preliminary evaluation of U.S. turtle protective measures under existing TED regulations. Unpublished Document.

Henwood, T.A., and W.E. Stuntz. 1987. Analysis of sea turtle captures and mortalities during commercial shrimp trawling. Fish Bulletin 85:813–817.

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List of Subjects in 50 CFR Parts 217 and 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: August 28, 1991.

Samuel W. McKeen,

Program Management Officer.

For the reasons set forth in the preamble, 50 CFR parts 217 and 227 are amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; and 16 U.S.C. 742a *et seq.*

2. In § 217.12, in the definition for "*Atlantic Area*", the phrase "36°33'00.8'N. latitude (North Carolina or Virginia border)" is revised to read "36°33'00.8"N. latitude (North Carolina/Virginia border)."

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

4. In § 227.72, Maps 1 through 4 are removed; and paragraphs (e)(2)(i), (e)(3)(i), and (e)(3)(ii) and Tables 1 and 2 are revised to read as follows:

§ 227.72 Exceptions to prohibitions

* * * * *

(e) * * *

(2) * * *

(i) Except as provided in paragraphs (e)(2)(ii), (e)(2)(iii), and (e)(2)(iv) of this section, a qualified turtle excluder device (TED) must be carried and used in each net during trawling by a shrimp trawler 25 feet (7.6 meters) or longer in length fishing for white, brown, pink, or seabob shrimp (or for rock shrimp in the Gulf of Mexico) in areas and during periods as follows (see Table 1 for a summary of the requirements):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year.

(*2*) Atlantic Area, offshore—September 1, 1991, through April 30, 1992; May 1 through August 31, each year.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore—all year.

(*2*) Gulf Area, offshore—March 1 through November 30, each year.

* * * * *

(3) * * *

(i) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler, regardless of length, fishing for white, brown, pink, or seabob shrimp (or rock shrimp in or from the Gulf or Southwest Florida Areas) must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements):

(A) Atlantic Ocean:

(*1*) Canaveral Area, inshore—all year.

(*2*) Atlantic Area, inshore—September 1, 1991, through April 30, 1992; May 1 through August 31, each year.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, inshore—all year.

(*2*) Gulf Area inshore—March 1 through November 30, each year.

(ii) Except for a shrimp trawler carrying and using a qualified TED in each net during trawling, a shrimp trawler less than 25 feet (7.6 meters) in length fishing for white, brown, pink, or seabob shrimp must limit each tow time to 90 minutes in areas and during periods as follows (see Table 2 for a summary of the requirements):

(A) Atlantic Ocean:

(*1*) Canaveral Area, offshore—all year.

(*2*) Atlantic Area, offshore—September 1, 1991, through April 30, 1992; May 1 through August 31, each year.

(B) Gulf of Mexico:

(*1*) Southwest Florida Area, offshore—all year.

(*2*) Gulf Area, offshore—March 1 through November 30, each year.

* * * * *

TABLE 1—WATERS WHERE TEDS ARE REQUIRED ON SHRIMP TRAWLERS 25 FEET (7.6 METERS) OR LONGER IN LENGTH

Area	Season
Atlantic Ocean:	
Canaveral Area—offshore	All year.
Atlantic Area—offshore	Sept. 1, 1991–Apr. 30, 1992; May 1–Aug. 31, each year.
Gulf of Mexico:	
Southwest Florida Area—offshore	All year.
Gulf Area—offshore	Mar. 1–Nov. 30, each year

TABLE 2—90-MINUTE TOW TIMES [1]

Area	Season	Vessel sizes
Atlantic Ocean:		
Canaveral Area—inshore	All year	All.
Atlantic Area—inshore	Sept. 1, 1991–Apr. 30, 1992; May 1–Aug. 31, each year	All.
Gulf of Mexico:		
Southwest Florida Area—inshore	All year	All.
Gulf Area—inshore	Mar. 1–Nov. 1, each year	All.

TABLE 2—90-MINUTE TOW TIMES [1]—Continued

Area	Season	Vessel sizes
Atlantic Ocean:		
Canaveral Area—offshore	All year	<25 ft. (7.6 m).
Atlantic Area—offshore	Sept. 1, 1991–Apr. 30, 1992; May 1–Aug. 31, each year	<25 ft. (7.6 m).
Gulf of Mexico:		
Southwest Florida Area—offshore	All year	<25 ft. (7.6 m).
Gulf Area—offshore	Mar. 1–Nov. 30, each year	<25 ft. (7.6 m).

[1] Tow-time restrictions do not apply to shrimp trawlers using a qualified TED in each net during trawling.

* * * * *

[FR Doc. 91–21084 Filed 8–29–91; 12:17 pm]

BILLING CODE 3510–22–M

50 CFR Part 663

[Docket No. 910763–1212]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA announces that the initial limit of 104,000 metric tons (mt) of Pacific whiting for fishing vessels that process fish (catcher/processors) has been exceeded and further taking and retention by such vessels in 1991 is prohibited. This action is taken under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP) and is necessary to preserve adequate amounts for deliveries to shore-based processors and to achieve the allocations adopted for 1991.

EFFECTIVE DATE: August 29, 1991. Comments will be accepted through September 19, 1991.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206–526–6140; or Rodney R. McInnis (Southwest Region, NMFS) 213–514–6199.

ADDRESSES: Comments should be sent to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115.

SUPPLEMENTARY INFORMATION: 50 CFR 663.23(b)(3) provides for a 1991 allocation of the Pacific whiting resource between harvesting groups (added by a final rule published elsewhere in this issue). The allocation, recommended by the Pacific Fishery Management Council (Council) at its April 1991 meeting, was designed to best meet the Council's goals of maintaining a balance of harvesting and processing opportunities that will provide economic benefits to all segments of the Pacific whiting industry. Initial limits were established for 1991 of 104,000 mt for harvest by fishing vessels that process fish (catcher/processors), 88,000 mt for harvest by fishing vessels that do not process fish (whether delivering to shoreside processors or to motherships at sea), and a reserve of 36,000 mt to be made available to either or both group(s). In making releases from the 36,000 mt reserve, priority is to be given to shoreside processing needs for the remainder of the year.

The regulations at 50 CFR 663.7(n) and (o) prohibit further taking and retention of Pacific whiting when the Secretary of Commerce (Secretary) announces in the **Federal Register** that an initial limit is reached, unless additional Pacific whiting is made available.

Secretarial Action: The best available information through August 13, 1991, indicates that the catcher/processor fleet has taken approximately 117,000 mt. Because the 104,000 mt initial limit for catcher/processors has been exceeded, the further taking and retention of Pacific whiting in the Fishery Management Area with a vessel that also processes fish is prohibited.

Classification

These actions are taken under the authority of, and in accordance with, 50 CFR 663.23(b)(3), as added by the final rule published elsewhere in this issue.

An environmental assessment/regulatory impact review (EA/RIR) was prepared for the authorizing regulations. The environmental impacts of the action taken in this notice were considered in the EA/RIR. Therefore this action is categorically excluded from the National Environmental Policy Act requirements to prepare an environmental assessment in accordance with paragraph 5a(3) of NOAA Directives Manual 02–10 because this action is within the scope of the authorizing rule and its EA/RIR.

This action is in compliance with Executive Order 12291.

The public has had the opportunity to comment on the rule that provides the authority for this action. The public participated in Groundfish Management Team, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in March, April, and July, 1991, at which the rule and this action were discussed. Additional public comments will be accepted for 15 days after publication of this notice in the **Federal Register** (see **ADDRESSES**).

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: August 28, 1991.

David S. Crestin,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91–21083 Filed 8–29–91; 11:43 am]

BILLING CODE 3510–22–M

50 CFR Part 663

[Docket No. 910763–1212]

Pacific Coast Groundfish Fishery

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

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) announces implementation of a rule that initially would limit the amount of the 1991 Pacific whiting quota of 228,000 metric tons (mt) that may be harvested in the Exclusive Economic Zone (EEZ) as follows: 104,000 mt for fishing vessels that harvest and process fish; 88,000 mt for fishing vessels that do not process fish; and the remaining 36,000 mt for a reserve to be made available to either or both group(s), giving priority to shoreside processing needs for the remainder of the year. If an initial limit is exceeded before the final rule is implemented, the overage will be subtracted from the reserve. The amount of Pacific whiting remaining in the reserve that may be processed in the EEZ may be limited if necessary to ensure supplies to shoreside processors. Any part of the initial limits that is determined not to be needed by one group may be made available to the other group. The availability of any

reappointments, releases of the reserve, or limits on at-sea processing will be announced in the Federal Register. This action is intended to promote the goals and objectives of the Pacific Coast Groundfish Fishery Management Plan by preserving a diversity of harvesting and processing opportunities for Pacific whiting over the broadest geographic area during the traditional whiting harvesting period.

EFFECTIVE DATES: August 28, 1991 through December 31, 1991.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115–0070, phone 206–526–6140; or Rodney R. McInnis, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731–7415, phone 213–514–6199.

SUPPLEMENTARY INFORMATION:

Background

This rule is promulgated under the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations at 50 CFR parts 620 and 663, as authorized by the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP contains a framework process (the socioeconomic framework) that provides the authority, guidelines, and criteria for recommending management measures to the Secretary that address social and economic conditions within the fishery. These measures can be implemented by regulation, without further amending the FMP. This rule was developed according to the socioeconomic framework in the FMP.

A proposed rule was published in the Federal Register at 56 FR 32165, which requested comments on the allocation of the Pacific whiting resource in 1991. This action provides an update on the progress of the fishery, responds to comments on the proposed rule received by the Secretary and NMFS, and announces the final rule. A more complete discussion of the proposal, background, and supporting rationale appear in the preamble to the proposed rule and environmental assessment/regulatory impact review (EA/RIR) available from the Northwest Region, NMFS, or the Pacific Fishery Management Council (Council) (see **ADDRESSES**).

Pacific whiting is the largest groundfish resource managed by the Council, and makes up over 50 percent of the potential annual groundfish harvest. Prior to 1980, this species was harvested primarily by foreign fishing vessels. Foreign directed fishing for whiting ended in 1989 when all the available whiting were allocated to U.S. fishermen, mostly for delivery of raw fish to foreign processing vessels under joint venture arrangements. The local groundfish industry and coastal communities viewed this growth in the American fishery as a major boon that generated millions of dollars. However, the Council expected that this "Americanization" would occur more slowly, with shoreside groundfish processors gradually replacing joint ventures while relying on the same fishing vessels that delivered to foreign processors to begin delivering to shoreside plants. Instead, the joint ventures, which took almost 90 percent of the whiting quota in 1990, have been eliminated in just one year. Most of the increase in domestic production results from the introduction of vessels that process their own catch (catcher/processors), rather than from traditional fishing vessels that deliver their catch to processors shoreside or at sea.

Before 1991, a large-scale domestic at-sea processing fleet had not participated to any great extent in the Pacific coast groundfish fishery, although this type of operation is common in Alaskan waters. The Council is concerned that this new high-capacity fleet, with no significant history in the Pacific whiting fishery off Washington, Oregon, and California, will both displace many of those vessels that have historically harvested the U.S. catch, as well as preclude the development of the shoreside whiting processing industry.

The Council's goal for shoreside processing of whiting is to maintain harvesting and processing opportunities over a traditional 7- to 8-month season, if possible. Such a season is considered necessary to protect earlier investments and to provide a stable supply of product conducive to obtaining financing for upgrading and expanding facilities and equipment. The Council views maintenance and growth of the shore-based Pacific whiting industry as critical because other major domestic fisheries that provide product to shore-based processors are being curtailed.

The increased effort from displaced joint venture catcher vessels into the non-whiting groundfish fishery will result in shortened seasons and more restrictive trip landing and frequency limits, will economically disadvantage many fishermen, and will exacerbate the current problem of excessive discards and wastage attributed to restrictive regulations. To the extent that the Council can maintain employment for the joint venture fishing vessels in the Pacific whiting fishery, adverse impacts on the other groundfish fisheries should be lessened. The Council believes that these limits are necessary to preserve the opportunity for shoreside processing plants and U.S. fishing vessels that previously delivered to foreign processors in joint ventures to continue to be fully involved in the fishery and to preserve the flow of income from the fishery into the local communities and states that have historically depended on the Pacific whiting fishery.

U.S. at-sea processors are experiencing similar pressures. More than 60 new U.S. at-sea processing vessels have been built to harvest the Alaska groundfish resources, which are much larger than the resources off Washington, Oregon, and California. As opportunities in Alaska decline, at-sea processors are being forced to look for other opportunities to harvest and process fish when the pollock fisheries off Alaska are closed. The Council recognizes that this component of the fishery also contributes to local economies, although not necessarily the same coastal communities that benefited from the traditional joint venture and shore-based fisheries. Moreover, this industry provides the additional processing capacity needed to fully "Americanize" the whiting fishery, as contemplated by the Magnuson Act.

The Council's overall goal for the whiting fishery is to maintain a balance of harvesting and processing opportunities that will provide economic benefits to all segments of the whiting industry rather than allowing all of the benefits to concentrate into a single segment of the industry. The Council believes that now is the best time to establish this balance because the industry is just beginning to develop and no individual processing segment has developed a dominant position. Without this rule, the high-capacity at-sea processing fleet potentially could take the entire quota and prevent shore-based processors from operating throughout the season.

Consequently, the Council developed its recommendation that best meets its goals of preserving opportunities for existing harvesters and processors while providing access to the Pacific whiting fishery to new entrants, as follows: The Council recommended an initial limit for 1991 of 104,000 mt on the amount of whiting that can be harvested by catcher/processors in the EEZ, an initial limit of 88,000 mt on the amount that can be harvested by fishing vessels that do not process fish, and a reserve of 36,000 mt to be made available to either or both group(s). Some or all of the 36,000

mt reserve may be made available to supply whiting for shoreside processing for the remainder of the year.

Any overage above the 104,000 mt or 88,000 mt initial limit will be counted against the reserve. The Regional Director may limit the amount of Pacific whiting remaining in the reserve that may be processed in the EEZ, if necessary to ensure supplies to shoreside processors. Any part of either the 104,000 mt limit for fishing vessels that process fish, or the 88,000 mt limit for fishing vessels that do not process fish, that is determined not to be needed may be made available to the other group. The Regional Director will review the progress of the fishery on September 1 and at whatever other times he determines is necessary, and the Secretary will announce any reapportionments, releases from the reserve, or limits on processing in the EEZ in a separate notice in the **Federal Register**. The Secretary may make the adjustments effective on filing and seek public comment for a reasonable period afterwards. As under the current regulations, any Pacific whiting harvested in state ocean waters (0–3 nautical miles offshore) will be counted toward the EEZ limits.

Progress of the Fishery

Seventeen at-sea processors, including both catcher/processors and motherships, have fished for Pacific whiting off the Pacific coast since March 1991. By the end of May, all but one catcher/processor and one mothership returned to Alaska to participate in the pollock fishery. Through June 18, 1991, approximately 163,000 mt of Pacific whiting had been processed at sea: 108,000 mt by catcher/processors, and 55,000 mt by catcher vessels delivering to motherships. The states reported that 6,000 mt been landed shoreside in a comparable time period; by July 27, shore-based landings were almost 9,000 mt.

More recent data for catcher/processors and motherships have not been made available to the public because of confidentiality restrictions that apply when fewer than three vessels operate in the fishery. (Each vessel carries an observer certified by NMFS, and the Regional Director monitors weekly catch reports submitted by the observers.) The amount taken by the catcher/processor fleet above 104,000 mt will be subtracted from the 36,000 mt reserve. Because catcher/processors have taken more than 104,000 mt, they probably will be prohibited from additional fishing concurrent with or shortly after publication of this final rule, if necessary to provide adequate amounts of the reserve for shore-based processing needs.

Public Comments and Response

The public comment period for this action extended from July 10–31, 1991. However, all written comments received by the Secretary or the National Marine Fisheries Service after the Council made its final recommendation in April 1991, through July 31, 1991, have been considered here.

Supporting Comments

More than 20 written comments were submitted to the Secretary or NMFS in support of the Council's recommendation. Fifteen were from fishermen, processors, and fishing associations (four from Washington, six from Oregon, and five from California). Comments also were received from the Council, the Governor of Oregon, and Senator Packwood of Oregon. All urged rapid implementation so that shore-based processing needs would not be precluded by at-sea processing in 1991.

Response

This action is being implemented as quickly as possible while affording full review by NMFS, NOAA, the Department of Commerce, the Office of Management and Budget, and the interested public. To expedite implementation, the 30-day cooling off period that normally follows publication of a final rule is being waived for good cause.

Opposing Comments

Three letters critical of the Council's recommendation or proposed rule were received from the at-sea processing representatives. Major comments are summarized below, following by a response.

Salmon

Comment: The allocation violates: (a) The Endangered Species Act (ESA) because: It will encourage trawling in near-shore areas in July when salmon bycatch rates have historically been the highest; there is inadequate information concerning the change in salmon bycatch rates, which would result from increased onshore processing; and a biological opinion for this rule has not been prepared regarding the impact on salmon; (b) national standard 2 (Magnuson Act section 301(a)(2)) by not using the best scientific information, because "the best available scientific information indicates that salmon conservation will be adversely affected by vessels supplying shore-based processing in near-shore areas during certain times of the year"; (c) national standard 1 (Magnuson Act section 301(a)(1)) because higher salmon bycatch rates in near-shore areas in the month of July may lead to overfishing of salmon stocks without full utilization of the whiting total allowable catch; and (d) the National Environmental Policy Act (NEPA) because an environmental impact statement (EIS) was not prepared that examines the "the significant environmental effect of implementing the proposed allocation on salmon stocks."

Response: (a) This rule was not effective in July and therefore, does not encourage fishing in July. In any case, it will not cause a major change in fishing patterns. Under this rule, shore-based processing could increase from 8,000 mt in 1990 to 26,000 mt in 1991 based on the most recent information (the original NMFS estimate of 1991 shoreside requirements was 36,000 mt).

A formal section 7 consultation under the ESA was conducted for Amendment 4 to FMP and its implementing regulations. The resultant biological opinion (August 10, 1990) specifically addressed the fishery for Pacific whiting and its impact on the Sacramento River winter run chinook, the only fish species currently listed as threatened under the ESA that potentially could be impacted. The biological opinion concluded that the whiting fishery was not likely to jeopardize the continued existence of any endangered or threatened species. An informal consultation on this rule concluded that the Pacific whiting fishery, operating under this rule, will not adversely affect endangered or threatened species. Consequently this action is consistent with the ESA.

(b) NMFS is unaware of scientific information that indicates that vessels delivering an additional 18,000 mt of whiting shoreside north of 39° N. latitude (where all shore-based plants are located) in 1991 will adversly affect salmon conservation. Preliminary data from ongoing observations in Oregon indicate that in June and July 1991, one salmon was taken in 597 mt of whiting landed in Newport, Oregon. Whiting fishermen agreed to avoid sensitive areas where salmon are likely to be found in the Klamath Conservation Zone and the area near the mouth of the Columbia River in 1991.

(c) There currenty is no prohibited species limit for salmon caught off Washington, Oregon, or California that would result in premature closure of the whiting fishery and underutilization of the whiting resource.

(d) The biological opinion (August 10, 1990) under the ESA was considered in

the EA/RIR for this rule. Based on the EA/RIR, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined there will be no significant impact on the environment, including on the Sacramento winter run chinook. Therefore, there is no requirement to prepare an EIS under NEPA.

Exclusive Shoreside Allocation

Comment: The EA/RIR fails to disclose the probable environmental impacts that will result from an exclusive shoreside allocation. Exclusive shoreside allocations lead to intensified fishing activity within near-shore areas and increased interaction with marine mammals, endangered salmon runs, and bycatch species.

Response: The rule is not an "exclusive shoreside allocation." The rule initially allocates 104,000 for catcher processors, and 88,000 for vessels that deliver shoreside or to motherships. If toward the end of the year some protection is required to allow the shoreside plants to operate throughout their traditional season, a limit will be placed on the amount of whiting that can be processed at sea. This arises out of the differing needs and natures of the fisheries. Therefore, the only time there might be an "exclusive shoreside allocation" will be at the end of the season with a small amount of whiting remaining. The EA points out that the total harvest and seasonal distribution of harvest of the Pacific whiting resource is not expected to differ among any of the alternatives considered. Salmon bycatch is addressed above. Interaction with listed marine mammal stocks is discussed in the August 10, 1990, biological opinion on Amendment 4 to the FMP; as stated above, this allocation for 1991 is not expected to cause a significant change from the fishery considered in the biological opinion.

Overcapitalization

Comment: The whiting processing sector currently is overcapitalized. Domestic processing capacity is adequate to take the entire quota. Development of additional processing capacity onshore encourages new processing capacity in an already overcapitalized fishery; the Secretary must determine what effect increased processing capacity will have on future conservation and management measures.

Response: This rule may provide the opportunity for some expansion of the onshore whiting processing capacity. Not only is the processing sector overcapitalized as noted by the commenter, but the harvesting sector is also overcapitalized. Any limited expansion of onshore processing may provide substitute markets for the joint venture harvesters that lost their markets when joint ventures abruptly terminated, and alternate processing options for processors facing reduced landings of other groundfish species. As stated earlier, the purpose of this rule is to provide a diversity of harvesting and processing opportunity. The overcapitalization of the groundfish fishery is being addressed in amendment 6 to the FMP, the draft limited entry amendment. This rule should not adversely affect conservation of groundfish, which is achieved through the use of quotas or harvest guidelines. It should be noted that this rule not only allows a limited opportunity for expansion, but allows onshore processors to continue to use their existing capacity throughout the year, as pointed out in the fair and equitable discussion below.

Discrimination Among Citizens of Different States

Comment: The rule is contrary to national standard 4 (Magnuson Act section 301(a)(4)) because it discriminates against citizens of Washington State. The catcher/processor fleet is based in Washington and a limitation on the processing fleet restricts income that would otherwise accrue to citizens of Washington State.

Response: The rule does not discriminate between residents of different states. Shore-based plants can be located in any coastal state; likewise, ownership of and employment on offshore processors is not limited by state citizenship.

Fair and Equitable Allocation

Comment: The rule is not fair and equitable because: The allocation is not based proportionally on processing capacity of the various processing groups; the allocation is based on 100 percent of shore-based and mothership requests and only 64 percent of the catcher/processor request; large investments in processors and lack of alternate fisheries and employment options apply both to at-sea and shore-based processors and should not be used as a reason to allocate to the shore-based industry.

Response: National standard 4 applies three conditions which must be satisfied when assigning fishing privileges among various U.S. fishermen: "* * * allocation should be (1) fair and equitable to all such fishermen; (2) reasonably calculated to promote conservation; and (3) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges."

(1) A number of factors may be taken into account when determining equity, among them processing capacity, investment, alternate fisheries, historical participation, diversity, stability, and markets. NMFS recognizes that all segments of the industry have made substantial investments and face reduced alternative fisheries and employment options. Initial requests by the catcher/processor fleet exceeded the 228,000 mt quota for Pacific whiting in 1991 and could not be completely accommodated.

This rule balances historical participation (both fishing and processing) in the whiting fishery, attempts to maintain stability in local economies, and provides for development of new processing capacity. All processing segments are provided the opportunity to use more whiting than they ever have in the past: Shore-based processors would have the opportunity to increase their share from 4 percent of the quota in 1990 to 15 percent of the quota in 1991 (closer to 11 percent at this time, with revised requests at 26,000 mt). Catcher processors that took about 3 percent of the quota in 1990 will have the opportunity to take 46 percent in 1991. Motherships, which did not operate at all in 1990, could take 39 percent in 1991. Unused portions of the initial allocations or reverse may be made available to the other groups if needed.

The at-sea processing fleet displaced joint ventures (foreign processing of U.S.-caught fish) entirely in 1991, as contemplated by the Magnuson Act. This rule is intended to mitigate the effects of Americanization on traditional joint venture fishermen by providing for reasonable levels of markets shoreside and at sea. This is consistent with Objective 13 of the FMP to "choose the measure * * * with the least disruption of current domestic fishing practices, marketing procedures and environment." Shore-based processors tend to take small amounts of whiting through the season as whiting migrate from south to north. Because whiting must be processed shortly after being caught (due to quality problems that can result if processing is delayed), shore-based vessels stay close to port. In contrast, the mobile processing fleet has much greater capacity and is able to follow the stock. Without this rule, the entire quota potentially could be taken by the high-capacity, at-sea processing fleet, with little or no opportunity for shore-based processing. Based on the

above information and the EA/RIR, the Secretary finds that this rule is fair and equitable.

(2) The Assistant Administrator has determined that this rule can be expected to promote conservation by spreading the harvest of the resource over a larger portion of the year, thus optimizing the yield.

(3) No particular entity obtains an excessive share of privileges as is demonstrated by the explanation above.

Efficiency

Comment: The rule is contrary to national standard 5 (Magnuson Act section 301(a)(5)), which mandates that management measures promote efficiency in the fishery, because the catcher vessels and shore-based processors are no longer efficient enough to compete in an open-access system. In addition, this is an economic allocation.

Response: The national standard regarding efficiency is not absolute; it states that measures shall, where practicable, promote efficiency. The implementing regulations at 50 CFR 602.15 acknowledge that the goal of promoting efficient use of fishery resources may conflict with other legitimate social or biological objectives. It states that inefficient measures should be avoided, unless they contribute to the attainment of other social or biological objectives. As stated above, the rule promotes other social objectives. It does not have economic allocation as its sole purpose, thus the rule does not violate national standard 5.

Comment: The rule is inconsistent with the FMP objective of increasing efficiency.

Response: The FMP does have an economic objective of attempting to achieve the greatest net economic benefits (Objective 4). But other objectives that must also be considered are to promote year-around marketing opportunities and to extend fishing for as long as practicable during the year for those sectors for which this is beneficial (Objective 5). This rule takes all of these objectives into account.

Unnecessary Cost and Duplication

Comment: The rule is contrary to national standard 7 (Magnuson Act section 301(a)(7)), which requires that conservation and management measures minimize costs and avoid unnecessary duplication. Onshore communities will incur increased costs for sewer, road, and other public services to support increased onshore processing and increased duplication of processing capacity and equipment.

Response: Representatives of coastal communities have not expressed concern about potential increases in public services, rather they have supported the rule. National standard 7 pertains to the duplication of regulations, not of processing plants.

Lack of Documents or Analyses

Comment: The following documents were not prepared: (1) A social impact analysis; (2) a cost-benefit analysis; (3) a fishery impact statement, and are required.

Response: (1) A specifically-designated social impact analysis, although desirable, is not required by law. Social impacts were considered in the EA/RIR. (2) A formal cost/benefit analysis is not required. A quantitative cost-benefit analysis is not available because there are inadequate data on which to base such an analysis; this was the first year of large-scale domestic processing of whiting at-sea. The best information available was referenced or incorporated in the EA/RIR and is adequate to justify this rule. (3) A fishery impact statement (FIS) is required of FMP amendments submitted to the Secretary after October 1990, not of every regulatory amendment. Nonetheless, the EA/RIR considered FIS issues.

Comment: (1) The rule and EA/RIR lack the required consideration of the economic contributions of the at-sea processing fleet and the potential tradeoffs between shoreside and at-sea processing, even though there are adequate data to be used in a quantitative analysis, including the survey conducted for the North Pacific Fishery Management Council. (2) The documents fail to consider the impact on workers, and assume that jobs in onshore plants, on catcher vessels that do not process, and on motherships are more valuable than jobs on catcher/processors. (3) Probable environmental impacts that will result from an exclusive shoreside allocation also were not considered.

Response: (1) There is little information on domestic at-sea processing of whiting. Three at-sea processors operated the last few months in 1990, taking less than 5,000 mt. In 1991, at-sea processing started in March, but production was not high until April and May; the shore-based fishery started about the same time. The 1991 whiting fishery was a new fishery for most at-sea processors. Therefore, data on whiting operations, including fishing effort, product type, quality, operating cost, product price, marketability, and market were not known before the fishery started, and use of data from the Alaska pollock fishery would be speculative. The fishery is ongoing, and these data still are not complete. Given these uncertainties, there was little basis for assuming that performance in the pollock fishery would be representative of the whiting fishery. For these reasons, the Council's Groundfish Management Team concluded, in the EA/RIR, that Alaska pollock operations should not be used as a surrogate for whiting operations at this time. The EA/RIR incorporates the best information available to the Council at the time that document was prepared.

The results of the survey conducted for the North Pacific Fishery Management Council relative to the pollock fishery have not yet been analyzed by that Council and made available to the public.

(2) The Council seeks to minimize disruption of current domestic fishing practices, marketing procedures, and environment, as contemplated by Objective 13 in the FMP. To minimize the impact on traditional whiting fishermen, the Council established an initial limit of 88,000 mt for vessels that do not process, consistent with initial estimates of shore-based and mothership markets for whiting.

(3) Probable environmental impacts resulting from increasing deliveries of whiting shoreside, from approximately 8,000 mt in 1990 to as much as 26,000 mt in 1991, are not expected to have a significant biological impact. Species of concern are managed with harvest guidelines or quotas. The total amounts that may be taken in 1991 will not be affected by this rule. Furthermore, this rule does not result in an obvious change in fishing patterns closer to shore. Joint venture catcher vessels in previous years were known to occupy the same grounds as catcher vessels delivering shoreside.

Comment: Commenters contested the EA/RIR statement that catcher/processors tend to concentrate income impacts in the Puget Sound area, whereas shore-based processing spreads the income impact over a wider coastal area. They alleged that this discussion failed to take into account personal income generated by catcher/processors.

Response: The EA/RIR includes data presented by the American Factory Trawlers Association, which includes the estimated payroll in Washington, Oregon, California, Idaho, and Montana. These data indicate 75 percent of personal income is received by employees in the State of Washington. This income was generated from other fisheries, notably off Alaska. It is not

known how this impact will change by catcher/processor participation in the whiting fishery.

Comment: One crew member onboard a catcher/processor feared that he would lose his job if the allocation were implemented.

Response: This rule allows development of all segments of the processing industry, including the new at-sea whiting processing fleet, while minimizing the impact of lost joint venture markets on fishermen who previously fished for whiting joint ventures. The Council intends to distribute equitably the whiting resource before any processing segment has developed a dominant position. If this rule were not implemented, the Council's objective of minimizing disruption of current domestic fishing practices would not be achieved.

Council Representation

Comment: At-sea processing interests were not adequately represented on the Council or its subcommittees when this allocation was developed. The Council members who supported this rule have a conflict of interest.

Response: Domestic processing of whiting was not an issue until 1991. Representatives have been welcome at, and participated in, Council and subcommittee meetings at which this allocation was derived. Comments submitted are part of the record and written comments are being responded to in this preamble. Due to the number and diversity of issues facing the Council, not all interest groups can be represented on the Council at one time.

As the commenter pointed out, the Council is made up at least partly of representatives of various fisheries. Their participation in Council management actions, after proper disclosure, is anticipated by the statute and does not constitute a conflict of interest. NMFS is aware of the composition of the Council and performs its own review of the record for fishery regulations.

Americanization

Comment: The final rule adversely affects Americanization of the processing industry as contemplated by the Magnuson Act.

Response: The participation by at-sea processors completely displaced joint venture processing, as requiring by the Magnuson Act. Clearly, domestic processing capacity and intent exceeds the 228,000 mt quota for whiting in 1991. Consequently, there will be no joint venture or foreign fishery in 1991. Americanization is expected and accomplished whether or not the final rule is implemented.

Safety

Comment: Safety was not considered. The large number of catcher vessels involved in mothership and shore-based operations are more likely to collide.

Response: The number of vessels delivering at sea in 1991 (about 20 vessels) is less than one-third the record number used to deliver to joint ventures in 1989. The number of vessels that will deliver whiting shoreside in 1991 is not known, but includes at least some of the vessels that previously delivered to joint venture processors. Consequently, the total number of catcher vessels that do not process is not expected to be significantly higher than in 1989. The number of at-sea processing vessels in 1991 (17) is considerably smaller than the number of foreign processing vessels operating in 1989 (44). Consequently, this rule is not expected to increase congestion on the fishing grounds above past levels.

Implementation of the Rule

Comment: The final rule is a waste of money and resources because the entire quota will be taken before the final rule will be effective.

Response: Current catch data do not indicate that the quota will be taken before the rule is implemented.

Comment: The shore-based industry will not harvest the 36,000 mt set aside for it, resulting in underutilization of the resource.

Response: Reassessment of the shore-based industry will be used to revise the estimate of processing needs. The shore-based industry is reassessed during the year. The most recent reassessment in June indicated that 26,000 mt was a more likely amount. Through July 23, 1991, more than half-way through the season, shore-based processors have used about 9,000 mt, more than has ever been taken in an entire year. Catcher/processors already have taken more than the 104,000 mt initial limit recommended by the Council, diminishing the amount in the reserve intended to be available to vessels that do not process. The Regional Director does not intend to reserve an unrealistic amount for shoreside processing.

Comment: There is no adequate system to ensure excess shoreside plant allocations will be released to at-sea processors; this will result in waste of the resource and inflict harm on at-sea processors.

Response: There are adequate provisions to provide unused whiting to interested sectors of the industry. The rule provides that any part of the initial 104,000 mt and 88,000 mt allocations that are not needed may be made available to the other group. The unused portion of the 36,000 mt reserve may also be released, providing first priority to deliveries shoreside. The Regional Director is authorized to make these releases when necessary.

Comment: One mothership representative commented that the proposed rule should have been more explicit regarding the Council's intent to give motherships priority over catcher/processors when the reserve is released.

Response: The comment is correct; the priority within the release of the reserve could have been clarified. However, because of the amount taken so far by the catcher/processors and the amount remaining in the reserve, allocation of the remaining reserve between motherships and catcher/processors is a moot point for 1991.

The public has had adequate opportunity to comment on the proposed rule on which this action is based. The public was involved in Council and Council subcommittee meetings, in November, March, and April that resulted in the Council's recommendation. Additional testimony was heard at the July meeting, predominantly in support of the proposed rule and its immediate implementation.

After consideration of these comments, the Secretary concurs with the Council's recommendation and takes final action, as proposed, with one technical change. The prohibitions on "harvest" are changed to prohibitions on "taking and retaining" consistent with other prohibitions in the groundfish fishery. This technical change is necessary in order to allow taking, but not retaining, of minor by-catches of whiting in other groundfish fisheries.

This allocation is for the fishing year 1991 only. In the future, the Council will evaluate a range of alternatives including, but not limited to, a shoreside processor preference.

Classification

This rule is published under authority of the Magnuson Act, 16 U.S.C. 1801 *et seq.*, and was prepared at the request of the Council. The Assistant Administrator has determined that this rule is necessary for management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law. This rule is based on the best available scientific information.

The Council prepared an EA/RIR that discusses the impact on the environment as a result of this rule. Based on the EA/

RIR, the assistant administrator has determined that there will be no significant impact on the environment as a result of this rule.

The Assistant Administrator has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises. The EA/RIR prepared for this rule indicates that the gross revenues generated from the Pacific whiting fishery are about the same (approximately $100 million) regardless of the proportion processed shoreside or at sea. The net effect of this rule will be to distribute the total revenues generated from the 228,000 mt quota between communities supported by the at-sea processors and those supported by shoreside processing plants and by U.S. fishing vessels that deliver to at-sea processors.

The General Counsel of the Department of Commerce has certified that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. This action preserves historical harvesting and processing opportunities for vessels and processing plants that traditionally harvested whiting off the Pacific coast while providing harvesting opportuntiites for new entrants into the whiting fishery. Large at-sea processors are not considered small businesses based on NMFS survey information indicating average annual gross revenues in the range of $8,000,000.

An informal consultation was conducted under section 7 of the Endangered Species Act (ESA) and it was determined that this action is not likely to adversely affect any endangered or threatened species listed under the ESA.

This rule contains no collection of information requirement subject to the Paperwork Reduction Act.

The Council has determined that this rule is consistent to the maximum extent practicable with the approved coastal zone management programs of the States of Washington, Oregon, and California. This determination was submitted for review to the responsible State agencies under section 307 of the Coastal Zone Management Act. The States of Washington and Oregon have concurred in this determination. The State of California did not comment within the statutory time period, and therefore consistency is automatically inferred.

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

This rule complies with the requirements for general notice and opportunity for interested persons to comment. It is impractical to defer the effectiveness of this rule for 30 days because the at-sea processing segment of the fishery has processed so much more Pacific whiting than the Council had expected. Therefore, the immediate implementation is necessary to conform with the Council's intent to provide for shore-based processing needs through the end of the season in 1991.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: August 28, 1991.

David S. Crestin,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 663 is amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

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

2. In § 663.7, new paragraphs (n), (o), and (p) are added as follows:

§ 663.7 Prohibitions.

* * * * *

(n) Take and retain Pacific whiting in the Fishery Management Area with a vessel that processes fish after the date, announced by the Secretary in a notice filed with the Office of the Federal Register, on which the catcher/processor portion of the whiting quota, established under § 663.23(b)(3), has been or will be taken, and before the date, announced by the Secretary, on which an additional portion of whiting for catcher/processor vessels is available.

(o) Take and retain Pacific whiting in the Fishery Management Area with a vessel that does not also process fish after the date, announced by the Secretary in a notice filed with the Office of the Federal Register, on which the portion of the whiting quota for catcher vessels that do not process fish, established under § 663.23(b)(3), has been or will be taken, and before the date, announced by the Secretary, on which an additional portion of whiting for catcher vessels that do not process is available.

(p) Process in the Fishery Management Area any Pacific whiting during the period of time that the Secretary has prohibited further processing of Pacific whiting in the Fishery Management Area in a notice filed with the Office of the Federal Register.

3. In § 663.23, a new paragraph (b)(3) is added as follows:

§ 663.23 Catch restrictions.

* * * * *

(b) * * *

(3) *1991 Pacific Whiting.* Initially, no more than 104,000 metric tons (mt) of the 1991 Pacific whiting quota of 228,000 mt may be taken and retained in the Fishery Management Area by fishing vessels that process fish, and no more than 88,000 mt of Pacific whiting may be taken and retained in the Fishery Management Area by fishing vessels that do not process fish. The remaining 36,000 mt will be held in reserve for later release to either or both categories of these vessels, at the discretion of the Regional Director. If the Regional Director determines that any part of the reserve is needed to allow the shoreside processing to continue through the end of the fishing year, the Regional Director may limit the amount of whiting from the reserve that may be processed in the Fishery Management Area. Any part of either the 104,000 mt limit for fishing vessels that process fish, or the 88,000 mt limit for fishing vessels that do not process fish, that the Regional Director determines not to be needed by that category of vessel may be made available to the other group. The Regional Director will review the progress of the fishery on September 1, and at whatever other times he determines necessary, and the Secretary will announce the availability and amounts of any reapportionments, the amounts and timing of releases from the reserve, and any limits on processing amounts from the reserve in the Fishery Management Area, in the Federal Register. The Secretary will announce in the Federal Register when the limit on processing of the reserve in the Fishery Management Area has been reached, at which time further processing in the Fishery Management Area will be prohibited. In order to prevent underutilization of the resource,

adjustments by the Secretary may be effective immediately, in which instance public comment will be sought for a reasonable period of time thereafter. If insufficient time exists to consult with the Council, the Regional Director will inform the Council in writing of actions taken within 2 weeks of the effective date.

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Proposed Rules

Federal Register
Vol. 56, No. 171
Wednesday, September 4, 1991

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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 5

Economic and Public Interest Requirements for Contract Market Designation

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for comments on proposed revisions to interpretative guideline.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is requesting comments on proposed revisions to its Guideline on Economic and Public Interest Requirements for Contract Market Designation, 17 CFR part 5 appendix A (1990) ("Guideline No. 1"). The Commission is proposing to revise Guideline No. 1 to streamline the designation approval process by clarifying the standard of review for specified terms and conditions of proposed contract designations under sections 5 and 5a of the Commodity Exchange Act, 7 U.S.C. 7 and 7a (1988) ("Act"). Moreover, the Commission is proposing to streamline the application for contract market designation required under Guideline No. 1 itself to reduce unnecessary or redundant materials. A revised format for applications for designation of contract markets in options on futures and options on physicals is also being proposed as a new section of Guideline No. 1. Finally, the Commission is providing notice to the public regarding the information which should be included by foreign boards of trade seeking an opinion whether a futures contract on an equity index traded on that exchange may be offered or sold in the United States.

DATES: Comments must be received by November 4, 1991.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, 2033 K Street, NW., Washington. DC 20581, attention: Office of the Secretariat. Reference should be made to "Revisions to Guideline No. 1.".

FOR FURTHER INFORMATION CONTACT: Blake Imel, Deputy Director or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581, (202) 254–3201 or 254–6990, respectively.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Requirements for Designation

The requirement that boards of trade demonstrate that they meet specified conditions in order to be designated as contract markets has been a fundamental tool of federal regulation of commodity futures exchanges since the Future Trading Act of 1921, Public Law No. 67–66, 42 Stat. 187 (1921).[1] Currently, the statutory requirements for designation are found in sections 5 and 5a of the Act, and additionally, for indexes of equities, in section 2(a)(1)(B) of the Act. Included among these provisions is the general requirement of section 5(g) of the Act, that exchanges demonstrate that trading in a proposed contract is not contrary to the public interest. In addition, designated contract markets must provide for the prevention of dissemination of false information (section 5(c) of the Act); must provide for the prevention of price manipulation (section 5(d) of the Act); must provide for delivery periods which will prevent market congestion (section 5a(4) of the Act); and must permit delivery on the contract of such qualities, at such points and at such differentials as will minimize market disruptions (section 5a(10) of the Act).[2] These requirements must be met by the contract market both initially and on a continuing basis, and the burden of demonstrating compliance rests with the contract market.[3]

The Commission, as an aid to the exchanges, has provided guidance in meeting this requirement. In 1975, the newly formed Commodity Futures Trading Commission, in one of its earliest actions, issued its Guideline on Economic and Public Interest Requirements for Contract Market Designation, 40 FR 25849 (1975), ("Guideline No. 1."). Subsequently, the Commission revised this guideline, publishing it as appendix A to part 5 of the Code of Federal Regulations. 47 FR 49832 (November 3, 1982).

These revisions to Guideline No. 1, as proposed, were intended to provide—

> Boards of trade with more specific criteria for initial and continued compliance with sections 5 and 5a of the Act for applications for contract market designation and for all currently designated contract markets, and * * * [to] reflect specific requirements relating to proposed futures contracts based on financial instruments and aggregates or indices of securities. In addition, the Commission believes that this * * * will provid[e] a uniform procedural framework within which boards of trade shall be required to meet their burden of demonstrating, both initially and for purposes of continued designation, compliance with the Act.

47 FR 49833 (citation and footnote omitted).

As revised in 1982, Guideline No. 1 was updated to address proposed innovations in the trading of futures contracts, including, in particular, futures contracts on financial instruments and on various indices and cash-settled futures contracts. Although commenters expressed skepticism

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[1] Designation as a contract market under the 1921 Act was contingent upon a board of trade's providing for the prevention of manipulative activity and the prevention of dissemination of false information, upon providing for certain types of recordkeeping, for admission into exchange membership of cooperative producer associations, and upon location of the contract market at a terminal cash market. See Section 5(a), (b), (c), (d) and (e) of the Future Trading Act of 1921. Although the constitutionality of this Act was successfully challenged as an improper use of the Congressional taxing power in *Hill* v. *Wallace*, 259 U.S. 44 (1922), all subsequent legislation regulating the futures industry was patterned after this statutory scheme.

[2] Among others, the Act further requires as a condition for contract market designation, that the contract market: be located at a terminal cash market or provide for terms and conditions as approved by the Commission (section 5(a) of the Act); provide for various forms of recordkeeping (section 5(b) and 5a(2) of the Act); permit the membership of cooperative associations (section 5(e) of the Act); provide for compliance with Commission orders (section 5(f) of the Act); submit its rules to the Commission (sections 5a(1) and 5a(12) of the Act); provide that the terms of the contracts conform to United States commodity standards or those adopted by the Commission (section 5a(6) of the Act); accept warehouse receipts issued under United States law (section 5a(3) of the Act); and enforce exchange rules (section 5a(8) of the Act).

[3] Section 6 of the Act provides, in part, that: [a]ny board of trade desiring to be designated a 'contract market' shall make application to the Commission for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply w'th the above requirements.

concerning the adaptability of a Guideline to innovative products, experience has demonstrated that such a Guideline can be applied flexibly, enabling the designation of a wide range of innovative products.

In this regard, the Commission notes that the past nine years have been a time of phenomenal growth in the futures industry. During this time, 108 futures contracts were designated by the Commission under the procedures established in the revised Guideline No. 1. Nonetheless, the time elapsed for Commission review and approval of proposed contracts steadily declined throughout the period. In Fiscal Year 1983, for example, the average number of days during which complete applications were pending with the Commission was 426 for futures and 361 for options. In Fiscal Year 1991, this period was roughly half that of 1983, 234 days for futures and 197 for options; but somewhat higher than Fiscal Year 1990's average review period of 151 days for futures and 134 days for options. It would therefore appear, based upon this record, that the objectives of Guideline No. 1 to establish uniform and more expeditious designation procedures were achieved.

Despite the relative success of the revised designation procedures of Guideline No. 1, the Commission is of the view that its designation procedures should be reviewed and updated periodically. The decreasing time for designations noted since Guideline No. 1 last was revised can be attributed to the Guideline itself and to the increasing expertise and experience of both the Commission and exchange staffs. Based upon the above, and its experience in administering the current Guideline, the Commission has reviewed the existing Guideline with the view of removing duplication of effort between its staff and the exchanges, streamlining further its procedures, reducing paperwork when such reductions can be made consistent with statutory requirements, updating the Guideline for market innovations and further clarifying and refining the requirements for designation. By concentrating on delineating those parts of the application for designation most crucial to demonstrating compliance with the requirements of the Act and Commission regulations, both the exchanges and the Commission will better be able to marshall their resources and to improve the timeliness of review.

II. Proposed Revisions to Guideline

As explained in greater detail below, the Commission is proposing to revise Guideline No. 1 once again in several fundamental respects. First, as revised, the Guideline would specify those terms or conditions of a proposed contract which, because they relate directly to the contract's susceptibility to manipulations, corners, squeezes or other disorderly trading, require a complete justification and explanation. Exchanges would be permitted to certify that certain other terms or conditions of contracts are consistent with the cash market without providing further justification or evidence. For other terms or conditions, which are in essence business decisions of the exchange, no justification, explanation or certification would be required. In addition, a cash market overview would be required only to the extent that an application for designation differs from a previously designated contract.

Secondly, the Commission has reconsidered its policies regarding liquidity requirements for designation of options which, in effect, prohibited the simultaneous designation of options on futures and the underlying futures contract. Accordingly, the Commission is proposing to amend Guideline No. 1 to encourage exchanges to seek simultaneous designation of futures contracts and options thereon. It is anticipated that such combined designation applications will permit the best use of resources by the Commission and by the exchanges.

Thirdly, a new format for applications for designation of options on futures is being proposed. This format specifies those specific terms and conditions which clearly meet the requirements for designation. To the extent that the exchanges choose to conform the option contract to the Guideline, no written justification or explanation for such terms and conditions would be required. Guidance would also be provided for the filing of applications for designation of options on physicals. Lastly, guidance is provided with respect to the information required for a determination on whether stock indices traded on foreign boards of trade may be offered or sold in the United States.

A. Revisions Relating to Applications for Futures Designation

1. Cash Market Overview

Part I of the amended Guideline relates to the designation of proposed futures contract markets. As under the current guideline, section (a)(1) relates to a required description of the cash market. As proposed herein, however, a cash market overview would be required to be included only when a contract, or only to the extent that a specific contract term, differs from a currently designated contract which is not dormant within the meaning of Rule 5.2, 17 CFR 5.2.

This revision reflects the diversity of futures contracts which have been designated since Guideline No. 1 was last amended. At that time, the Commission anticipated the development of many new and innovative instruments, including in particular, cash-settled contracts. Many such innovative contracts were in fact designated by the Commission. In light of these developments, the Commission and the exchanges now have a much wider range of expertise in differing types of instruments. In light of this increased experience, the Commission believes that cash market overviews need only be included in a contract market designation application when a proposed instrument is materially different from an existing contract. When it is merely iterative of an existing contract, no such general overview is required. When a particular term of a contract is unique, but the contract is otherwise similar to an existing, non-dormant contract, the description of the cash market could be confined to the matters pertinent to that particular contract term.

For example, under the proposed revisions to the Guideline, a cash market overview would be required for an application for designation of a proposed contract on a commodity which currently is not traded, and is unrelated to any currently designated, non-dormant contract. In contrast, no such overview would be required for a proposed contract on a United States debt security. When the proposed contract is for a particular commodity which is currently trading, but differs significantly from the existing contract in one particular term, such as, calling for an unconventional form of delivery, the cash market description could be confined to the issue of this type of delivery in the cash market.

When a cash market overview would be required, the analysis of the cash market should support the justification of individual contract terms required in section (a)(2) of the Guideline, as discussed in greater detail below. As the Commission noted in 1982 when promulgating Guideline No. 1:

> To support its justification of individual contract terms, an exchange may find it appropriate to describe in some detail the aspects of a regional cash market (including storage and transportation) which will be the source of deliverable supply while describing with less specificity a more broadly defined cash market in which the contract may also

be used for hedging and price basing. In addition, the Commission recognizes that the relevant segments of the cash markets for certain physical commodities may be international in scope, while others are merely national or regional in scope. Thus, the relevant segments to be described will vary depending upon the contract. Finally, while the Commission's Guideline contains several categories of information which should be considered by the exchange, the Commission anticipates that not every item of paragraphs (1)–(4) of section A of the guideline will apply equally to each contract. 47 FR 49835.

Whether a complete cash market overview or a partial description relating only to specific contract terms is necessary and the degree of specificity which should be provided would be left to the determination of the exchange in the first instance. As under current practice, however, supplementation of applications can be required when, in the view of Commission staff, necessary. Of course, when there is a question regarding the breadth of analysis which may be required, the Commission, in order to expedite the review process and to reduce the number of requests for supplementation, encourages exchanges to consult informally with its staff to ascertain the staff's view in advance of filing.[4]

2. Justification of Individual Terms and Conditions

Section (a)(2) provides that an exchange justify individual terms and conditions of the contract. As noted above, the contract provisions which must be justified relate to the pricing and delivery mechanisms of the contract. Accurate pricing of a futures contract through price convergence of the futures and cash market through physical deliveries or through cash settlement is a prerequisite to a well-functioning futures market which can be used for hedging or price basing. Accordingly, the Commission proposes to focus its review of applications for designation on evidence that the contract's terms provide for a deliverable supply which will not be conducive to price manipulation or distortion and that such a deliverable supply reasonably can be expected to be available to the short trader and saleable by the long trader at its market value in normal cash marketing channels. When the futures contract specifies cash settlement, the Commission would focus on evidence that the settlement price is derived through an accurate, timely, and reliable process, not readily susceptible to manipulation or distortion.

Consistent with the requirements for the cash-market overview, the justification of the proposed contract's individual terms and conditions would not be required when that term or condition is the same as one already approved by the Commission. For example, when a proposed contract uses certain of the same delivery specifications as a contract which already has been approved, the application need not provide the complete justification that currently would be required. Instead, when the previously approved and proposed rules are in all material respects identical, this part of the application would be required to include only the text of the proposed rule and the rule number or other citation to the approved contract market rule upon which it is based, and nothing further. When the proposed rule is similar to a previously approved rule, but differs in some material respect, an explanation and evaluation of the deviation should be provided. When the term is unique, a complete justification would be required, as under the current Guideline.

For example, when a proposed contract mirrors the deliverable specifications of an existing contract, or provides for an identical cash settlement procedure, no justification would be required. However, if a proposed contract varies the delivery months from those of the existing contract's, then the application would have to address the departure from the previously approved rule, relating the appropriateness of the proposed terms to the practice in the underlying cash market and the availability of deliverable supplies. Finally, if the proposed contract also introduces a completely new feature, such as a different delivery grade, then it would be required to justify that term in full, again in relation to the prevailing practice of the cash market.

The evidence justifying such new or materially different terms or conditions would include, in particular, the complete specification and commodity characteristics for par and non-par delivery including associated price differentials, delivery points, locational differentials for delivery points, level of deliverable supplies normally available, delivery facilities and the capacity of such facilities, seasonality of such supplies and the selection of delivery months. This evidence must demonstrate that the contract terms and conditions, as a whole, would result in a deliverable supply which will not be conducive to price manipulation or distortion. When a term or condition does not conform with the prevailing cash market practices, however, the application would contain an explanation of the variance and to demonstrate that the particular term is nonetheless appropriate for the contract.

When cash settlement is an alternative to, or substitute for physical delivery, the application would be required to demonstrate that the settlement price of the contract is at a price reflecting the underlying cash market, and is not subject to manipulation or other distortions. This should include, in particular, a demonstration of the appropriateness of the cash price series, an analysis of its reliability, acceptability, public availability and timeliness, and an analysis of the potential for its manipulation or distortion.

Finally, the application would be required to specify and justify speculative position limits as required under Commission Rule 1.61, 17 CFR 1.61. Under Commission Rule 1.61, all contract markets not having Commission set speculative limits are required to provide for such limits. Rule 1.61(a)(2) provides guidance relating to how such limits are to be set and justified. In particular, Rule 1.61(a)(2) provides alternative standards for setting speculative position limits:

> A contract market shall base its determination of levels for speculative limits on such factors that will accomplish the purposes of this section. As appropriate, these factors shall include position sizes customarily held by speculative traders on such market for a period of time selected by the contract market, which shall not be extraordinarily large relative to total open positions in the contract for such period. In addition to the above or upon a determination that the above standard is inappropriate for setting such limits, a contract market may base its determination on other factors which may include breadth and liquidity of the cash market underlying each delivery month and the opportunity for arbitrage between the futures market and cash market in the commodity underlying the futures contract.

Presently, under the first of the above standards, applications for contract market designation are required to justify prospective position limits by analogy to those levels initially approved for an existing contract for a

[4] As under the current version of Guideline No. 1, the information required includes, where applicable, statistical data. The data should be compiled for a period of time sufficient to reflect historic patterns of production, consumption, and exchange of the commodity. As before, five years is a benchmark requirement for data which are readily available. Where data are unavailable or available only at great expense or burden, other sources of information, including interviews with persons having knowledge of the cash market, can supplement or substitute for statistical data. Compare, 47 FR 49835.

similar commodity or, under the second standard, by reference to opportunity for arbitrage between the cash and proposed futures market and the breadth and liquidity of the cash market. In this regard, however, the Commission notes that it is reviewing generally its speculative position limit policies and will propose further revisions to this section of Guideline No. 1 if it becomes appropriate in light of any such subsequent revisions to its speculative position limit policies.

3. Stipulation of Conformity To Cash Market Practices

As noted above, the Commission has determined that certain terms and conditions of a contract are more closely related to the contract's ease of trading and may therefore be an important predicate for its successful introduction and the maintenance of its trading volume. Thus, although important as a business decision, such terms, which do not bear directly on the contract's deliverable supply or cash settlement, are unrelated to the potential susceptibility of a contract to manipulation or price distortions. In light of this, the Commission recognizes that the exchanges have a vital interest in setting these terms appropriately, and that the Commission's interest is somewhat less. Accordingly, the Commission is proposing to accept a stipulation by the exchange that these terms of the contract are consistent with the cash market rather than requiring a full justification of their consistency.

In particular, the Commission is proposing to accept a stipulation of consistency with the cash market in lieu of a full justification for terms of the proposed contract relating to the delivery pack or composition of the delivery units, the size of the contract unit as related to the size of the typical cash market transaction, inspection and certification procedures including the duration of inspection certificates, verification of delivery eligibility, requirements surrounding the delivery instrument, transportation terms at the point of delivery, and provisions for payment of costs in making and taking delivery, including inspection, assay, certification, warehouse charges or rail charges.[5] Similarly, with respect to maximum price limits, an exchange would stipulate that the proposed limits are not unduly restrictive.[6]

4. Other Requirements

Guideline No. 1 currently contains a section relating to the demonstration by an applicant that a proposed contract market meets the "economic purpose test." [7] When the Congress, in 1974, enacted section 5(g) of the Act, it made clear that the public interest test is broader than, but included, an economic purpose test for designation. See S. Rep. 1194, 93rd Cong., 2d Sess. 36 (1974). The economic purpose test requires a board of trade to demonstrate that transactions for future delivery in a commodity are, or reasonably can be expected to be, quoted and disseminated for price basing, or used as a means of hedging against possible loss through price fluctuation on more than an occasional basis.

Guideline No. 1 currently specifies information and data which would demonstrate that a proposed contract reasonably could be expected to be used for these purposes. In addition, as requested, statements from, or reports of interviews with potential users of the contract can be used as evidence demonstrating the manner in which the proposed contract could be used for hedging or for price basing. Moreover, the Guideline differentiates the information which would be required to demonstrate the hedging use of a contract that already is designated.[8]

Although demonstrating economic purpose appears not to have imposed a substantial burden on contract markets applying for designation, Commission staff generally has sufficient expertise to ascertain economic purpose in the absence of an explicit written justification by the exchange separate from the required cash market overview and justification of the contract's terms and conditions. In this regard, it should be noted, that a demonstration of the economic purpose of a contract is often implicit, or encapsulated, in the exchange's demonstration that the terms and conditions of the proposed contract meet the criteria of the Guideline.[9]

Accordingly, in order to avoid duplication of effort between Commission and exchange staff, the Commission is proposing to revise Guideline No. 1 to provide that a board of trade applying for contract market designation shall submit additional evidence pertaining to the economic purpose test, the public interest standard of section 5(g) of the Act, or of any other requirement for designation under the Act or Commission rules, only as requested. In this way, the amount of information concerning the contract routinely filed will be reduced, and the Commission will be able to request with specificity the additional information or justification needed when particular instances warrant.

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[5] Although the Commission has determined that exchanges can stipulate that these rules are consistent with the cash market, in certain instances, depending on the provision of the rule, the Commission might be required to consider further the particular rule under the standards of section 15 of the Act.

Section 15 provides that "The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this Act, as well as the policies and purposes of this Act, in * * * approving any bylaw, rule, or regulation of a contract market * * *." 7 U.S.C. 19 (1988).

For example, if the exchange provided for a minimum or maximum fee in a rule relating to storage or deliveries from warehouses, the Commission may be required to review the provision under section 15 of the Act. Such a review under section 15 might necessitate requesting additional pertinent information from the exchange regarding the operation of the rule. As noted above, in order to facilitate the expeditious consideration of applications for designation, the Commission recommends that exchanges consult with Commission staff informally, in advance of submitting a formal application to ascertain whether such additional information would be required.

[6] Currently, section (B)(7) of the Guideline requires that an exchange justify "[a]ny restrictions on daily price movements, including the effect of any such restrictions upon the contract's pricing and hedging functions." Inasmuch as such price limits are not required, but rather are permitted as a matter of exchange discretion, the Commission in the past has requested exchanges to furnish data demonstrating that such price limits would not often be constraining. However, because the exchanges have every incentive to ensure that their markets not be unduly constrained, the Commission will accept an exchange's stipulation without submission of the actual data supporting its analysis of the frequency that the particular price limit chosen would have been a constraint during an appropriate historical period.

[7] Guideline No. 1 currently also contains a separate provision that requires a board of trade to provide information as requested, other than that submitted under the other parts of the Guideline, pertaining to the public interest standard contained in section 5(g) of the Act. As explained above, this requirement is being included within a larger, catch-all provision.

[8] The designation requirements of the Act are continuing in nature. Accordingly, under Commission Rule 1.50, the Commission can request that contract markets file "a written report containing such supporting data, and other information and documents as the Commission may specify, that demonstrates that such contract market is complying with the conditions and requirements of sections 5 and 5a off the Act * * *." Accordingly, Guideline No. 1 has relevance to existing, as well as proposed, contracts. Section C(5) of the Guideline provided, in part, that a demonstration of economic purpose for an existing contract should rely on an evaluation of actual trading experience in the contract and on its actual use for hedging by commercial participants.

[9] In the case of proposed contracts which are similar to nondormant, existing contracts, the economic purpose can be readily ascertained by reference to the existing contract. With regard to contracts in new or innovative commodities, the required cash market overview and justification of terms and conditions generally should provide sufficient information to make an informed evaluation of the proposed contract's economic purpose.

B. Revisions Relating to Applications for Option on Futures Designation

Unlike the requirements for the designation of futures contracts which are found in the Commodity Exchange Act, the requirements for the designation of exchange-traded options are provided in Commission rules, in particular, Commission Rule 33.4, 17 CFR 33.4 (1990). Some of these requirements mirror those for designation of futures contracts, such as the requirement of Rule 33.4(a)(5)(i) that an option must serve a *bona fide* economic purpose. Other tended to define or restrict the trading of options to particularly liquid futures contracts.[10] Yet others, in light of the lack of familiarity with the trading of options at the time of their reintroduction, merely codified those terms and conditions which options should contain. In any event, in the absence of a guideline specific to options, applications for designation of options followed the pattern established in Guideline No. 1, substituting compliance with the various Commission rules, as appropriate.

In this regard, in a separate notice published elsewhere in the **Federal Register**, the Commission, after reviewing its rules relating to the designation of option contract markets, promulgated various revisions to those rules. In particular, as explained more fully in that Notice of Final Rulemaking, the Commission removed the following rules: Rule 33.4(a)(5)(iii), which required a specified volume of trading in the underlying futures contract prior to designation; Rule 5.4, which established a delisting criterion for the trading of options on low-volume futures contracts; Rule 33.4(b)(1)(iv), which required that exchanges adopt rules establishing a period of time before the expiration of an option during which no new option strike prices can be added; and Rule 33.4(g), which required exchanges to provide a comprehensive list of occupational categories of commercial users of the commodity underlying the option. In addition, the Commission revised Rule 33.4(d)(1), which required exchanges to justify expiration dates of less than 10 days before first notice day or last trading day of the futures, whichever came first, redesignating it as Rule 33.4(b)(2). In addition, the Commission amended Rule 15.00(b)(2), to raise to 50 contracts the minimum reportable level requiring no exchange justification.

In light of these revisions to the option designation requirements, the Commission has determined that further guidance to the exchanges on the format for applications for designation might facilitate and expedite both the application and the review process. Accordingly, the Commission is proposing to add to Guideline No. 1 two new sections, one relating to designation of contract markets for options on futures and one relating to designation of contract markets on options on physicals.

1. Philosophy of Guideline for Option Designation

The format and philosophy underlying the new sections of Guideline No. 1 which relate to the designation of options differ significantly from the section relating to the designation of futures contracts. The Commission has noted that, over the years, option contracts have tended to exhibit uniform terms and conditions. Moreover, for all options on futures, the salient characteristics of the underlying futures contract have already been subject to Commission review. Similarly, options on physicals, in general, have been proposed as a companion contract to a closely related futures contract. In light of this apparent uniformity of option terms and conditions and the scrutiny of the underlying or a companion futures contract at the time of its designation, the Commission has determined that, for option designations, a briefer application is warranted.

In this regard, the Commission has analyzed its rules for option contract market designation and has simplified the format to be followed. When exchanges choose to conform their proposed option contracts to the list of requirements set forth, no justification or other written explanation would be required. Because most option contracts have similar terms and conditions, the Commission anticipates that this checklist format for applications for designation of options on futures contracts should be applicable to most, if not all, filings. When a proposed option on a futures contract departs from the specified requirements, however, a narrative explaining the reason for the departure and the consistency of that provision with the applicable Commission rule would still be required.

The second point of departure from current practice concerns the timing of designation of options on futures contracts. Since the reintroduction of exchange-traded options, the Commission has permitted the designation of options on only established, liquid futures markets. In this regard, the Commission, among the original requirements for designation, limited the number of options contracts permitted on each exchange (17 CFR 33.4 (1982)), and required that the underlying futures contract of a proposed option meet a quantitative test of liquidity (17 CFR 33.4(a)(5)(iii)(1982)). These requirements were promulgated in light of the then lack of recent trading history in options and based, in part, upon a prospective concern whether in the absence of such a numeric test, "the underlying cash and futures market * * * [would] be sufficiently liquid to prevent option trading from disrupting those markets." 46 FR 54500, 54505 (November 3, 1981).

Subsequently, as a consequence of the ending of the pilot status of the program, the Commission removed the numerical limitations on the number of option contracts which could be traded on any one exchange, but reaffirmed a (higher) liquidity requirement for the underlying futures contract.[11] See, 51 FR 17464, 17467–17468 (May 13, 1986). In addition, the Commission promulgated a delisting criterion for options when the

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[10] In enacting the Commodity Exchange Act in 1936, Congress, concerned with the history of excessive price movements and severe disruptions in the futures markets attributed to speculative trading in options, prohibited option trading in all of the then regulated commodities. Act of June 15, 1936, ch. 545, section 5, 49 Stat. 1494. Massive fraud in the offer and sale of options in commodities not so enumerated in the Act occurred in the late 1960s and early 1970s. Consequently, in creating the new Commodity Futures Trading Commission, Congress granted it broad power to regulate transactions in options in the previously unregulated commodities. Commodity Futures Trading Commission Act of 1974, Public Law No. 93–463, section 402(c), 888 Stat. 1412–13 (codified at 7 U.S.C. 6c(b)). Following a period when options were banned because of abuses, *see*, 43 FR 16153, (April 17, 1978) and Futures Trading Act of 1978, Public Law No. 95–405, section 3, 92 Stat. 867, the Congress, in 1982, authorized the Commission to implement a pilot program for the trading of options on futures contracts on designated contract markets. See, section 208(2) of the Futures Trading Act of 1982, 96 Stat. 2294, 2301.

Among the original requirements for designation of option contracts was a limitation on the number of options contracts permitted on each exchange. 17 CFR 33.4 (1982). In addition, as a condition for designation of an option, the underlying futures contract was required to meet a quantitative test of liquidity. 17 CFR 33.4(a)(5)(iii) (1982).

[11] Coupled with the increase in the threshold limitation, the Commission adopted an alternative test, also quantitative in nature. The alternative test permitted the introduction of an options on a futures contract with less than a full year's trading history of the underlying futures. However, the Commission noted that "[t]hat is not to say, however, that the Commission will at any time permit the simultaneous designation of a futures contract and option on a futures market with the expectation that the introduction of the two contracts at the same time will assure adequate liquidity. The designation of the derivative option market must be predicated upon a preexisting, liquid, underlying futures market." 51 FR 17468.

underlying futures contract becomes liquid.[12]

One prominent effect of these requirements was to prohibit the simultaneous designation of an option and its underlying futures contract. However, over the past several years, exchanges have requested exemptions from these requirements in order to attempt to initiate trading in options on new, or otherwise illiquid futures contracts. In requesting such exemptions, they suggested that the opportunity to trade both the futures and the option on the futures creates synergy in the trading of both.

Beginning in 1987, the Commission has granted exemptions from the Rule 33.4(a)(5)(iii) volume requirement for certain proposed options on newly or recently designated futures contracts based on the degree of liquidity in the cash market, the degree to which the terms of the underlying futures contract ensured the opportunity for arbitrage and close alignment between the cash and futures markets and whether an accurate and widely disseminated price series existed which is representative of values of the commodity underlying the future.[13] Since granting these exemptions, the Commission has observed no detrimental effects directly related to the volume of trading or lack thereof in the underlying futures at the time of designation, regardless of the particular characteristics of the cash markets or the degree of liquidity of the futures markets.

In light of the above, and for the reasons more fully explained in a companion notice published elsewhere in the **Federal Register**, the Commission deleted the liquidity requirements for designation of options on futures contracts. This action has led the Commission to reevaluate its view discouraging the simultaneous designation of new futures contracts and options thereon. In the absence of any demonstrable detrimental effects on an illiquid futures market from the designation of an associated derivative, administrative efficiency suggests that simultaneous designations should be encouraged, rather than discouraged.

The Commission believes that when an exchange anticipates the eventual listing of both a futures and an associated option, the simultaneous designation of both instruments presents a ready opportunity to facilitate the designation process. In particular, because of the uniformity of their terms and the prior review of the underlying future, the time required currently for option designations is far less than for a related futures contract. However, the simultaneous analysis of these applications should avoid any duplicative effort by the staff, further reducing the time necessary for approval. In addition, simultaneous designations would be more efficient with regard to the preparation of both the applications and Commission documents by reducing the need for overlapping or redundant materials. In those individual cases when the Commission has permitted simultaneous designations by granting exemptions from the current volume requirements, the staff has reported such efficiencies.

While the Commission is not proposing to mandate that exchanges file such applications simultaneously, it encourages all exchanges to undertake to do so. This change in procedure, in addition to creating additional opportunities for administrative savings, should also provide exchanges with the opportunity to explore more fully any competitive advantages which they perceive may attach to an ability simultaneously to list new futures contracts and options thereon. Even if an exchange does not have immediate plans to list a new option when introducing a new futures contract, Commission Rules 5.2 and 5.3, regarding dormant and low-volume contracts, have a three year grace period from the time of designation before becoming effective. And, even after that three year period, initiating trading in a dormant contract is administratively less burdensome than applying for a completely new designation. Moreover, to the extent that these new procedures gain acceptance by the exchanges, and real cost benefits are achieved, the Commission also will reevaluate the current fee structure for designation applications. See, 17 CFR part 5, appendix B (1990).

2. Operation of the Guideline

As proposed, part B of revised Guideline No. 1 is a list of requirements for designation which can also be used as a checklist when applying for designation. The application for designation of an option on a futures contract, under the Guideline, consists of three documents: (1) The proposed exchange rules which constitute the terms and conditions of the option; (2) the exchange rules which constitute the terms and conditions of the underlying futures contract; and (3) the specified list of requirements or explanatory information as indicated, in the format identified in the Guideline. The format of the list of requirements is being specified in the Guideline to standardize the submissions as much as possible.

The list of requirements identifies seven items which would be reviewed by the Commission for consistency between applications for designation and Commission rules. In addition, the list identifies the standard which unambiguously would meet the requirements of the rule. Exchanges must review and complete the list, indicating which exchange rule fulfills the specified requirement. When the particular exchange rule has been identified and meets the stated standard, no further explanation would be required. When an exchange rule does not meet the standard as articulated, then an explanation would be required about how the exchange rule complies with the applicable Commission rule.

Specifically, the list of requirements provides that exchange rules meeting the standards specified therein meet the requirements for designation of Commission Rules 33.4(b), 33.4(d), 1.61, and 15.00(b)(2), 17 CFR 33.4(b), 33.4(d), 1.61, and 15.00(b)(2)(1990). For these rules, no further information or justification would be required. In particular, under this approach, exchange rules must provide procedures for the listing of strike prices which are specified and automatic. 17 CFR 33.4(b)(1). Except for options on cash-settled futures contracts, the option may not expire later than the day before first notice day or the last trading day of the future, whichever comes first. 17 CFR 33.4(d)(1). The minimum tick size of the option must be equal to, or less than, that of the underlying futures; and a daily price limit, if any, must be equal to or greater than, that of the underlying

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[12] In making the trading of options permanent, the Commission determine that a delisting criterion was necessary to establish "the minimum acceptable level below which the individual trader in the underlying futures market may be adversely affected by the existence of a derivative market." 51 FR 17469. This delisting criterion, Rule 5.4, provided, in part, that if volume in the underlying futures contract fell below 1,000 contracts per week for the preceding six month period, no new option expirations could be added.

[13] In particular, the Commission granted, pursuant to Commission Rule 33.11, 17 CFR 33.11, such an exemption for the proposed option on the Australian dollar futures contract traded on the Chicago Mercantile Exchange, which was designated as an option contract market on November 17, 1987. Similar exemptions were granted for options on the 5,000 ounce silver, 100 ounce gold, mortgage-backed, and medium-term Treasury note futures contracts traded on the Chicago Board of Trade. These options contracts were designated in the spring of 1988.

The thirteen option contracts exempted by the Commission have exhibited varying degrees of liquidity in the underlying cash market, in the breadth of the dissemination of a price series representative of values in the underlying commodity and in the directness and ease of arbitrage with the associated cash market.

futures. 17 CFR 33.4(d). The exchange rule for aggregation of accounts must be identical with the language of Commission Rule 1.61(g) or with a previously approved rule of the exchange. The speculative position limit must provide for a combined net position in futures and options on a futures equivalent basis at the futures position levels with inter-month spread exemptions consistent with those of the futures contract. 17 CFR 1.61. And finally, the contract must have a reportable level of fifty contracts or fewer. 17 CFR 15.00(b)(2).

The Commission wishes to make clear that the proposed checklist is merely a means of providing guidance to the exchanges on what standard terms and conditions are clearly consistent with Commission requirements for designation, thereby limiting the information which must be provided routinely by exchanges whose rules conform to these criteria. In this regard, the Commission will analyze the terms and conditions of the proposed contract to ascertain whether the contract meets all of the criteria for designation, in addition to those listed. In this regard, the staff may request additional information or data when such information in its view is necessary to determine whether the application meets these criteria. For example, the exchange is not required routinely to provide any evidence demonstrating economic purpose. However, the staff could request such information when warranted. Finally, the Commission intends to refine the list of requirements as experience warrants.

C. Revisions Relating to Applications for Options on Physicals Designation

Inasmuch as options on physicals combine characteristics of both futures and options, in that they have the pricing characteristics of options but provide for physical delivery or cash settlement, as proposed, the applications for designation of such instruments combine the previous applicable sections of the Guideline. In this regard, the application, when required by individual sections of the Guideline, must include a written cash market overview, a justification of individual terms and conditions relating to the terms of delivery and the deliverable supply, stipulation of consistency with the cash market for other terms and conditions, and an option's checklist regarding the terms of the option. Of course, when the option on a physical is on a commodity in which a non-dormant contract is designated, the Guideline would not require the cash market overview or justification of terms and conditions.

D. Additional Requirements for Designation

Revised Guideline No. 1, as under the current Guideline, would pertain only to the economic and public interest requirements for contract market designation. It is not intended to address all of the Commission's designation requirements. In this regard, it should be noted that, with the exception of the initial contract market designation for a board of trade, the routine written application for designation as a contract market generally is, and has been, limited to these economic and public interest requirements. However, there are additional requirements for designation which the Commission must consider and which are not addressed routinely in the required written application.[14]

As is true under current designation procedures, contract market applicants would continue to be subject to these requirements, despite their exclusion from the written submission required under the guideline. The Commission contemplates that, except for the initial contract market designation for a board of trade, its staff would continue to require written submissions regarding those designation requirements not addressed in revised Guideline No. 1 on a case-by-case basis. Nonetheless, the Commission seeks public comment as to whether, in addition to the items listed in the proposed Guideline No. 1, part B list of requirements, there is any other aspect of the Commission's contract market designation requirements which could be addressed adequately in a requirement checklist format.

E. Effect on Pending Applications

The proposed revisions to Guideline No. 1 relieve a burden on exchanges filing applications for designation as contract markets. In particular, the proposed guideline merely clarifies the criteria used by the Commission in reviewing such applications and suggests the information required to demonstrate that the designation of a board of trade as a contract market is in compliance with the statutory requirements. Accordingly, the Commission is permitting exchanges to file applications consistent with the proposed format contained herein immediately upon its publication in the **Federal Register**. Of course, pending applications that have been filed under the proposed revisions would have to be brought into conformity with the final version, to the extent that it differs from that which is being proposed. Moreover, the Commission will begin immediately to review all pending applications under the standards articulated in the proposed revisions to this Guideline, as applicable.

On the other hand, the Commission recognizes that exchanges may have submissions already under development and nearing completion which will comply with the existing Guideline. Accordingly, the Commission anticipates that it will continue to process all complete pending applications in the format in which they were submitted and will accept applications for designation in the current format for a transitional period following the effective date of final revisions to the Guideline. In this regard, the Commission anticipates that, on a case-by-case basis, it may permit certain modifications to, or adjustments in, the required format as necessary to mitigate any particular burdens associated with the transition to the revised format.

F. Foreign Futures Markets

The offer or sale in the United States of futures contracts traded on or subject to the rules of a foreign exchange is subject to the Commission's exclusive jurisdiction.[15] Section 2(a)(1)(B)(ii) sets forth three criteria for Commission designation of futures contracts in a group or index of securities:

(1) The contract must provide for cash settlement;

(2) The proposed contract will not be readily susceptible to manipulation nor to being used to manipulate any underlying security; and

(3) The index is predominately

[14] For example, Commission Rule 155.2 requires for designation of any futures or option contract that a contract market establish various trading standards for floor brokers which prohibit, among other things, trading ahead of a customer order, disclosure of a customer order and prearrangement of a trade. Similarly, the part B checklist to revised Guideline No. 1 pertaining to the designation of options does not address the designation requirement that a board of trade must establish a sales practice audit program to review each member futures commission merchant's compliance with the board of trade's customer protection requirements. See, Commission Regulation 33.4(c). Also, the Commission may consider, at its discretion, various other factors in designating a contract market in an option, such as the nature of the clearing mechanism, the exercise process and the default provisions. See, Commission Regulation 33.4(d). Routinely, the Commission also has considered the systems for margining options and the procedures for the allocation of option exercise notices as part of the designation application process. See, section 4c(b) of the Act and Commission Regulation 33.4(b)(3).

[15] Section 2(a)(1)(A), 7 U.S.C. 2 (1982); 120 Cong. Rec. 34497 (1974) (statement of Senator Talmadge) (the terms "another board of trade, exchange, or market" in section 2(a)(1)(A) make clear the Commission's exclusive jurisdiction includes futures contracts executed on a foreign board of trade, exchanges or market).

composed of the securities of unaffiliated issuers and reflects the market for all publicly traded securities or a substantial segment thereof.

Although section 2(a)(1)(B)(ii) provides that the Commission shall not designate a board of trade as a contract market unless the Commission finds that the board of trade meets the enumerated criteria, the Congress understood that a foreign exchange might lawfully offer futures contracts on stock indices absent designation. Thus, the House Committee on Agriculture suggested that a foreign board of trade could apply for "certification" that its stock index contract meets all applicable Commission requirements. H.R. Rep. No. 565, part 1, 97th Cong., 2d Sess. 85 (1982). That Committee further explained that a foreign exchange seeking to offer in the United States a futures contract based upon an index of United States securities must demonstrate that the proposed futures contract meets the requirements set forth in section 2(a)(1)(B)(ii). *Id.* With regard to a foreign stock index contract based on "foreign securities," the House Committee suggested that the Commission use such criteria as it deems appropriate.

The Commission has not promulgated procedures for the filing of requests for "certification" to offer or sell such contracts. The Commission staff, however, however, has issued several "no-action" letters regarding foreign stock index contracts based on foreign securities using the criteria set forth in section 2(a)(1)(B)(ii) of the Act. As of May 31, 1991, ten foreign boards of trade have sought to offer or sell in the United States fifteen stock index contracts.[16] The Commission's Office of the General Counsel has opined favorably on seven of these, six remain pending and two were withdrawn.[17]

Generally, the staff has analyzed such requests for a "no-action" opinion under the requirements of Section 2(a)(1)(B)(ii) of the Act. Accordingly, the staff has requested that the foreign board of trade file information which they deem relevant to those criteria. In this regard, it has been suggested that the review of such requests might be accelerated by the Commission's promulgation of a guideline applicable to such requests, similar to Guideline No. 1.

Although the Commission is not now promulgating such a guideline, it wishes to facilitate the process for filing such requests by a foreign board of trade, in light of the interest of U.S. investors in trading foreign stock index futures contracts, by identifying that information which would assist in the staff's analysis of such requests. Certain of the information identified below, such as in (4), is compatible with the information required from a U.S. board of trade applying for designation as a contract market for a domestic stock index futures contract. Other information, such as in (3) below, responds to specific concerns or issues which arise when trading is on a foreign board of trade. Accordingly, the following information is suggested to be included in such a request by a foreign board of trade:

(1) The terms and conditions of the contract and all other relevant rules of the exchange, and if applicable, of the exchange on which the underlying equities are traded, which have an effect on the over-all trading of the contract, including circuit breakers, price limits, position limits or other controls on trading;

(2) Surveillance agreements between the foreign boards of trade and the exchange(s) on which the underlying equities are traded;

(3) When applicable, information regarding foreign blocking statutes and their impact on the ability of United States government agencies to obtain information concerning the trading of such contracts; and

(4) Information and data relating to:

(a) The computation, availability, and timeliness of the index;

(b) The total capitalization, number of stocks, and weighting of the stocks by capitalization and, if applicable, by price, in the index;

(c) Breakdown of the index by industry segment;

(d) Procedures and criteria for selection of individual stocks for inclusion in, or removal from, the index;

(e) Method of calculation of the cash-settlement price and the timing of its public release;

(f) Average daily volume of trading by calendar month in each of the period of time, and separately, the daily volume in each underlying stock for six expirations (cash-settlement dates) or for the six days of that period on which underlying equities for a six month cash-settlement would have occurred had each month of the period been an expiration month.

In addition, Commission staff considers the ability and willingness of the foreign regulatory authority to share information with the Commission. Finally, it should be noted that, in particular instances, additional information may be required by the Securities and Exchange Commission. All of the above correspondence, justifications, and information should be submitted in English. This includes the explanatory notes appended to tables and other charts of data.

III. Related Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. 47 FR 18618 (April 30, 1982). This interpretative guideline provides guidance to contract markets on what information is necessary to demonstrate compliance with the statutory requirements for designation. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. However, the Commission invites comments from any firms or other persons which believe that the promulgation of these rules might have a significant impact upon their activities.

List of Subjects in 17 CFR Part 5

Commodity futures, Contract markets, Designation application.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular sections 4c, 5, 5a, 6 and 8a, 7 U.S.C. 6c, 7, 7a, 8, and 12a, the Commission hereby proposes to amend part 5, chapter I of title 17 of the Code of Federal Regulations as follows:

PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

1. The authority citation for part 5 continues to read as follows:

[16] Specifically, the following foreign boards of trade have expressed a desire to offer or sell in the United States stock index futures contracts: The International Futures Exchange (Bermuda), Ltd.; the London International Financial Futures Exchange Limited; Marche a Terme International de France; New Zealand Futures Exchange Limited; Osaka Securities Exchange; the Singapore International Monetary Exchange, Ltd.; Sydney Futures Exchange Limited; the Tokyo Stock Exchange; the Hong Kong Futures Exchange and Toronto Futures Exchange.

[17] The Commission's Office of the General Counsel has opined favorably on the following contracts: The Financial News Composite Index of the International Futures Exchange (Bermuda), Ltd.; the Financial Times-Stock Exchange 100 of the London International Financial Futures Exchange, Limited; the Nikkei Stock Average of the Singapore International Monetary Exchange, Ltd.; and the Toronto Stock Exchange 300 Index futures contract, Toronto Stock Exchange 300 Spot Index, Toronto Stock Exchange 35 Index futures contract and the Toronto Stock Exchange 35 Spot of the Toronto Futures Exchange.

Authority: 7 U.S.C. 6c, 7, 7a, 8 and 12a.

2. Appendix A is proposed to be revised to read as follows:

Appendix A to Part 5—Guideline No. 1; Interpretive Statement Regarding Economic and Public Interest Requirements for Contract Market Designation

For purposes of a board of trade seeking designation as a contract market and thereafter for the purpose of demonstrating continued compliance with the requirements of sections 4c, 5, and 5a of the Commodity Exchange Act, and regulations thereunder, the following shall be provided to the Commission.

(a) *For Designation of Contract Markets in Futures.*—(1) *Description of the Cash Market.* In support of the justification and demonstration to be furnished under paragraph (a)(2) of this Guideline, a board of trade shall submit with its application a description of the cash market for the commodity on which the contract is based: *Provided, however,* that no such description is required when the same, or a closely related commodity, is already designated as a contract market and is not dormant within the meaning of § 5.2 of this part, and when the terms and conditions of the proposed contract are the same, or substantially the same, as those of the designated contract market. When a particular term(s) or condition(s) of the proposed contract differs from those of the designated contract market, but otherwise is substantially the same, the description of the cash market can be confined to those aspects relevant to the particular term(s) or condition(s). For purposes of this section, the term cash market includes all aspects of the spot and forward markets in which the commodity underlying the contract is merchandised and for which the contract serves a hedging or price basing function. As applicable to the justification of individual contract terms or the contract's hedging or price basing function, the cash market description shall include:

(i) Production of the underlying commodity, including as appropriate, geographical locations and seasonal patterns in the case of tangible commodities and scheduled issuances in the case of financial instruments;

(ii) Consumption of the underlying commodity, including, as appropriate, geographic locations and seasonal patterns of intermediate and ultimate consumption in the case of tangible commodities;

(iii) The nature and structure of the cash marketing channels, including the nature and number of marketing institutions, the nature of the forward contracting market, and the manner in which the price of the commodity is determined at various stages in its marketing;

(iv) The prevalent means of communications, methods of financing commodity ownership, and, in the case of tangible commodities, the manner in which tangible commodities are transported and stored; and

(v) Information provided by the board of trade pursuant to this paragraph shall include statistical data when applicable and when reasonably available. Such data shall cover a period of time sufficient to show accurately the historical patterns of production, consumption and marketing of the commodity which are relevant to the pricing or hedging use of the contract and/or the specification of its terms and conditions. In the absence of a justification of providing data from a shorter period, at least five (5) years of such data should be provided. If the board of trade through reasonable effort cannot obtain sufficient data, interviews with, or statements by, persons having knowledge of the cash market may be used to supplement or, if necessary, substitute for quantitative information.

(2) *Justification of Individual Contract Terms and Conditions.* A board of trade shall submit an analysis and justification of significant individual terms and conditions of the contract. Such analysis and justification for each term and condition should be supported in the manner provided by section (a)(1)(v) of the Guideline. *Provided, however,* that no such analysis or justification is required when a contract on the same or a closely related commodity is already designated as a contract market and is not dormant within the meaning of § 5.2 of this part, and when the terms and conditions of the proposed contract are the same, or subtantially the same, as those of the designated contract market. When, however, a particular term(s) or condition(s) of the proposed contract differs from that of the designated contract market, only the particular term(s) or condition(s) which differs must be analyzed or justified. When the proposed contract is substantially different from a designated contract market which is not dormant within the meaning of § 5.2 of this part, but an individual term(s) or condition(s) is the same as, or substantially the same as, a term or condition approved for any other designated contract market which is not dormant within the meaning of § 5.2 of this part, then the individual term(s) or condition(s) need not be analyzed and justified and need only be referenced to the original, approved term or condition.

(i) The justification submitted by a board of trade concerning significant contract terms shall include, when applicable, (a) evidence of conformity with the underlying cash market and (b) evidence that the term or condition will provide for a deliverable supply which will not be conducive to price manipulation or distortion and that such a supply reasonably can be expected to be available to the short trader and saleable by the long trader at its market value in normal cash marketing channels. To the extent that a term or condition is not in conformity with prevailing cash market practices, the board of trade shall provide a reason for the variance and demonstrate that the term or condition is necessary or appropriate for the contract and will result in sufficiently available and saleable deliverable supplies.

(ii) For contracts which require delivery, the justification shall include a demonstration that the contract terms and conditions, as a whole, will result in a deliverable supply which will not be conducive to price manipulation or distortion, including when applicable the following:

(A) Complete specification and commodity characteristics for par and non-par delivery (such as grade, class, weight, issuer, maturity, rating) including the economic basis for the premiums and discounts, or lack thereof, for differing characteristics. For futures contracts based on debt securities, this shall include an economic justification of the formula to be used for the evaluation of non-par instruments;

(B) All delivery points, including, when applicable, for each point:

(*1*) The nature of the cash market at the delivery point (e.g., auction market, buying station or export terminal);

(*2*) A description of the composition of the market;

(*3*) The normal commercial practice for establishing cash market values and the availability of published cash prices reflecting the value of the deliverable commodity;

(*4*) The level of deliverable supplies normally available, including the seasonal distribution of such supplies; and

(*5*) Any location differentials for delivery points, including the economic basis for discounts or premiums, or lack thereof, applying to delivery points;

(C) A description of the delivery facility (such as warehouse, depository, financial institution) including:

(*1*) The type(s) of delivery facility at each delivery point;

(*2*) The number and total capacity of facilities meeting contact requirements;

(3) The proportion of such capacity expected to be available for traders who may wish to make delivery and seasonal changes in such proportions; and

(4) The extent to which ownership and control of such facilities is dispersed or concentrated.

(iii) For contracts when cash settlements may serve as an alternative to, or substitute for, physical delivery, information submitted by the board of trade pursuant to this section must include evidence that the cash settlement of the contract is at a price reflecting the underlying cash market, will not be subject to manipulation or distortion, and must also include:

(A) An analysis of the price series upon which such settlement will be based, including the series' reliability, acceptability, public availability and timeliness, and

(B) An analysis of the potential for manipulation or distortion of the cash-price series.

(iv) With regard to delivery months, the board of trade shall specify the delivery months and, when applicable, shall describe the relationship of each future delivery month to cyclical variations in deliverable supplies, availability of warehouse space, transportation facilities, cash market activity, and any other factors which may affect the viability of delivery or ascertaining a cash settlement price in each such month. The board of trade's justification shall also consider the delivery months for existing contracts which draw on the same deliverable supply or cash settlement mechanism.

(v) For those contract markets required to have in effect speculative position limits under § 1.61 of this chapter, an analysis of the consistency of the speculative position limits proposed in the application with the criteria set forth in that section.

(3) *Stipulation of Conformity to the Cash Market.* A board of trade shall submit a stipulation that, when applicable, the following terms and conditions of its proposed contract are consistent with prevailing cash market practices. For those terms and conditions which are contrary to such a stipulation, the board of trade shall provide a reason for the variance from prevailing cash market practices and demonstrate that the term or condition is necessary or appropriate for the contract. The terms and conditions include the following:

(i) The permissible delivery pack or composition of delivery units;

(ii) The size of contract unit;

(iii) The inspection and certification procedures for the verification of delivery eligibility and, for perishable commodities, the duration of the inspection certificate and any discounts applied to deliveries of a given age;

(iv) The delivery instrument (such as a warehouse receipt or demand certificate), and the conditions under which such instrument is negotiable;

(v) The transportation terms at point of delivery (such as FOB, CIF, proportional rail billing or freight paid to another destination);

(vi) The provisions for payment of costs in making and taking delivery, including a description of significant costs (such as inspection, assay, certification, warehouse charges or rail charges);

(vii) The minimum price change (tick); and

(viii) A separate stipulation that any restrictions on daily price movements (maximum price fluctuations), are not overly restrictive in relation to price movements in the cash market.

(4) *Other required information.* As requested, a board of trade shall submit additional evidence relating to any of the information, data or stipulations required by paragraph (a) of this Guideline. In addition, a board of trade shall submit any other evidence, information or data requested relating to whether a contract meets, initially or on a continuing basis, the public interest standard contained in section 5(g) of the Act, including in particular, whether a proposed contract reasonably can be expected to be used for hedging and/or price basing on more than an occasional basis, and whether a designated contract has in fact been used for such purposes on more than an occasional basis, or any other requirement for designation under the Act or Commission rules.

(b) *For Designation of Contract Markets in Options on Futures.*—(1) *Terms and Conditions.* A board of trade shall submit the terms and conditions of the proposed option and of the proposed or designated futures contract underlying the proposed option.

(2) *Option Designation Checklist.* A board of trade shall submit an Option Designation Checklist for Options on Futures Contracts. When each individual criterion identified by the checklist is met by a term or condition of the proposed option, the exchange rule number or other identification of that term or condition shall be included on the checklist. The option designation checklist is as follows:

OPTION DESIGNATION CHECKLIST FOR OPTIONS ON FUTURES CONTRACTS

Criteria	Applicable commission rule, 17 CFR	Standard	Met by exchange rule number
1. Speculative limits	1.61	Combined net position in futures and options on a futures-equivalent basis at the futures position levels, with inter-month spread exemptions that are consistent with those of the futures contracts.	
2. Aggregation rule	1.61(g)	Same as § 1.61(g) of this chapter or previously approved language	
3. Reporting level	15.00(b)(2)	50 contracts or fewer	
4. Strike prices	33.4(b)(1)	Procedures for listing strikes are specified and automatic	
5. Option expiration	33.4(d)(1)	Options, except for options on cash-settled futures contracts, expire not less than one business day before the earlier of the last trading day or the first notice day of the underlying futures contract.	
6. Minimum tick	33.4(d)	Tick is equal to, or less than, the underlying futures tick	
7. Daily price limit, if specified	33.4(d)	Price limit, if any, is equal to, or greater than, underlying futures price limit	

(3) *Justification of Individual Contract Terms and Conditions.* A board of trade shall submit an analysis and justification of the following:

(i) Any term or condition not meeting a criterion identified on the Option Designation Checklist identified in paragraph (b)(2) of this Guideline or any criterion of that Checklist which is not met by a particular term or condition of the option: *Provided, however,* that no such analysis or justification is required when such an individual contract term(s) or condition(s) is the same as, or substantially the same as, a term or condition approved for any other designated contract market which is not

dormant within the meaning of § 5.2 of this part; and

(ii) Such other term(s) or condition(s) as requested.

(4) *Other required information.* As requested, a board of trade shall submit additional evidence, information, data or stipulations relating to whether a contract meets, initially or on a continuing basis, the public interest standard contained in section 5(g) of the Act, the economic purpose standard of § 33.4(a)(5)(i) of this chapter or of any other requirement for designation under the Act or Commission rules.

(c) *For Designation of Contract Markets in Options on Physicials.*—(1) *Terms and Conditions* A board of trade shall submit the terms and conditions of the proposed option.

(2) *Description of the Cash Market.* A board of trade shall submit a description of the cash market as provided under paragraph (a)(1) of this Guideline.

(3) *Justification of Terms and Conditions.* A board of trade shall submit an analysis and justification of the following:

(i) The term(s) or condition(s) identified in paragraph (a)(2) of this Guideline relevant to the option on a physical;

(ii) Any term or condition not meeting a criterion identified on the Option Designation Checklist contained in paragraph (c)(5) of this Guideline; and

(iii) Such other term(s) or condition(s) as requested.

(4) *Stipulation of Conformity to the Cash Market.* A board of trade shall submit a stipulation that the terms and conditions listed in paragraph (a)(3) of this Guideline are consistent with prevailing cash market practices, or, for those which are not, a justification consistent with paragraph (a)(3) of this Guideline.

(5) *Option Designation Checklist.* A board of trade shall submit an Option Designation Checklist for Options on Physicals. When each individual criterion identified by the checklist is met by a term or condition of the proposed option, the exchange rule number or other identification of the term or condition shall be included on the checklist. The option designation checklist is as follows:

OPTION DESIGNATION CHECKLIST FOR OPTIONS ON PHYSICALS

Criteria	Applicable commission rule, CFR 17	Standard	Met by exchange rule No.
1. Speculative limits	1.161	If there is a futures contract in the same commodity on the same exchange, combined futures and options on a futures-equivalent basis at the futures position levels, with inter-month spread exemptions that are consistent with those of the futures contracts.	
2. Aggregation rule	1.61(g)	Same as § 1.61(g) of this chapter or previously approved language	
3. Reporting level	15.00(b)(2)	50 contracts or fewer	
4. Strike prices	33.4(b)(1)	Procedures for listing strikes are specified and automatic	
5. Option expiration	33.4(d)(1)	Options expire not less than one business day before the earlier of the last trading day or the first notice day of any futures contract in the same or a related commodity, except for cash—settled futures contracts.	

(6) *Other required information.* As requested, a board of trade shall submit additional evidence, information, data or stipulations relating to whether a contract meets, initially or on a continuing basis, the public interest standard contained in section 5(g) of the Act, the economic purpose standard of § 33.4(a)(5)(i) of this chapter, or of any other requirement for designation under the Act or Commission rules.

Issued in Washington, DC this 27th day of August, 1991 by the Commodity Futures Trading Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 91–21043 Filed 9–3–91; 9:18 am]

BILLING CODE 6351–01–M

POSTAL SERVICE

39 CFR Part 265

Release of Information; Modification of Fees for Record Retrieval by Computer

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to modify the fees charged for furnishing Postal Service records retrieved by computer to members of the public. The proposed modified fees implement existing policy to recover the actual cost incurred by the Postal Service for the retrieval and represent no change in policy concepts.

DATES: Comments on the modified fees must be received on or before October 4, 1991.

ADDRESSES: Comments may be mailed to: USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–5010, or delivered to room 8141 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in room 8141.

FOR FURTHER INFORMATION CONTACT: Rubenia Carter (202) 268–4872.

SUPPLEMENTARY INFORMATION: The proposed fee modifications do not alter the basic concepts or thrust of Postal Service policy in the area of records retrieval fees that may be charged in connection with the release of information to the public. Computer retrieval fees were last published on February 21, 1989 (54 FR 7417). The fees are subject to periodic revision. The proposed modifications to part 265—Release of Information—revise the fees for retrieving data by computer to reflect current labor and administrative costs.

List of Subjects in 39 CFR Part 265

Release of Information, Postal Service.

For the reasons stated herein, the Postal Service proposes to amend part 265 of 39 CFR as follows:

PART 265—RELEASE OF INFORMATION

1. The authority citation for part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552.

2. Appendix A to part 265 is revised to read as follows:

Appendix A to Part 265—Information Services Price List

When information is requested that must be retrieved by computer, the requester is charged for the resources required to furnish the information. Estimates are provided to the requester in advance and are based on the following price list.

Description of services	Rate	Unit
A. Central Processing Unit Utilization based upon IBM 3090-200 Performance Standard:		
Batch Processing Services	$3,600.00	Hour.
On-Line Services	4,000.00	Hour.
Channel Utilization:		
Direct Access Storage Devices	0.54	1,000 EXCPs.[1]
Tape Channel	0.96	1,000 EXCPs.[1]
Local Printing	1.20	1,000 Print lines.
B. Personnel Charges:		
Programming Services	53.00	Hour.
Manual Unit Services	37.00	Hour.

[1] Execution of channel program.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-21129 Filed 9-3-91; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300234; FRL-3928-9]

RIN 2070-AC18

Certain Fruits and Vegetables; Definitions and Interpretations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to define the commodity terms melon, muskmelon, sugar apple, and summer squash for tolerance purposes and proposes to amend the crop grouping for cucurbit vegetables to agree with the proposed muskmelon definition. The Interregional Research Project No. 4 [IR-4] requested this action.

DATES: Comments, identified by the document control number [OPP-300234], must be received on or before October 4, 1991.

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. 1128, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Office of Pesticide Programs, 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: Section 180.1(h) of the CFR (40 CFR 180.1(h)) provides a listing of general commodity terms and EPA's interpretation of the application of those terms as it applies to tolerances and exemptions from the requirement of a tolerance for pesticide chemicals under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a). The general commodities are listed in column A of 40 CFR 180.1(h) and the corresponding specific commodities, for which tolerances and exemptions from the requirement of a tolerance established for the general commodity apply, are listed in column B. The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has requested that the Administrator propose that 40 CFR 180.1(h) be amended as follows:

1. Add "sugar apple" to the general category of commodities in column A and define the general commodity terms for tolerance purposes as "*Annona squamosa* L. (sugar apple, sweetsop, anon)," and its hybrid "*Annona squamosa L.* x *A. cherimola M.* (atemoya)." Also "*Annona reticulata L.* (true custard apple)." The first two commodities were proposed by IR-4, and the Agency suggested that *A. reticulata L.* (true custard apple) also be included in column B, as it is limited to southern Florida in the continental U.S., and both the tree and the fruit are very similar to the sugar apple.

2. Add "summer squash" to the general category of commodities in column A, and define the general commodity terms for tolerance purposes by inserting the raw agricultural commodities as follows to the specific commodities listing in column B: "Fruits of the Gourd (Cucurbitaceae) family that are consumed when immature, 100 percent of the fruit is edible either cooked or raw, once picked it cannot be stored, has a soft rind which is easily penetrated, and if seeds were harvested they would not germinate; e.g., *Cucurbita pepo* (i.e., crookneck squash, straightneck squash, scallop squash, and vegetable marrow); *Lagenaria* spp. (i.e., spaghetti squash, hyotan, cucuzza); *Luffa* spp. (i.e., hechima, Chinese okra); *Memordica* spp. (i.e., bitter melon, balsam pear, balsam apple, Chinese cucumber); and other varieties and/or hybrids of these."

3.a. Revise the term "melons" in the general category of commodities in column A by defining the general commodity term for tolerance purposes as "muskmelons, watermelons, and their hybrids" in column B.

b. Add "muskmelons" to the general category of commodities in column A, and define the general commodity term for tolerance purposes by inserting the corresponding raw agricultural commodities as follows to the specific commodities listing in column B: "*Cucumis melo* (includes true cantaloupe, cantaloupe, casaba, Santa Claus melon, crenshaw melon, honeydew melon, honey balls, Persian melon, golden pershaw melon, mango melon, pineapple melon, and snake melon; and varieties and/or hybrids of these."

IR-4 also requested that 40 CFR 180.34(f)(9)(ix) be amended by deleting the terms for "melon" and adding and alphabetically inserting "muskmelon" in the cucurbit vegetables group as follows: "muskmelons, including hybrids (*Cucumis melo*) (including true cantaloupe, cantaloupe, casaba, Santa

Claus melon, golden pershaw melon, mango melon, pineapple melon, snake melon)." It was also requested that the representative commodities be revised to read "Cucumber, muskmelon, and summer squash."

These requests are supported with the following information:

1. The inclusion of the proposed technical amendment concerning sugar apple (see item 1. above) will provide a new entry for and clarify, for regulatory and research purposes, the definition for the crop "sugar apple." The commodities, *Annona squamosa L.* (sugar apple, sweetsop, anon), its hybrid *A. squamosa L.* x *A. cherimola M.* (atemoya), and *A. reticulata L.* (true custard apple) are all sufficiently similar, botanically as well as in growth habit and culture, to be included under the term "sugar apple." The crops named are all of the same genus which belongs to the family Annonaceae. The common term, custard apple, is also often used in reference to all three species, and cultivation of all is restricted to Florida in the United States, except *A. squamosa L.*, which is also cultivated in Puerto Rico. All three species are commonly found in various tropical and subtropical regions of the world. It is reasonably expected that when equal amounts of pesticide to control a common pest are applied to the commodities named, resulting residue levels will be similar.

2. The general morphology of the plants proposed to be defined for tolerance purposes as "summer squash" (see item 2. above) is quite similar. The cultural practices for these plants, such as land preparation, planting/thinning, climate, soil, and rainfall/irrigation requirements are quite similar. Pest problems (weed, insect, plant disease, and nematode) and pest control methods are similar. It is reasonably expected that when equal amounts of pesticide are applied to summer squash for control of a common pest, the residue levels will be similar.

3. The proposed technical amendments described in item 3. above will clarify the definition for "melons" and add a new definition for "muskmelons," for regulatory and research purposes. In the U.S., the terms "muskmelon" and "cantaloupe" are used interchangeably. The varieties of *Cucumis melo* are botanically and culturally similar. The plants are annuals, trailing, and vinelike. Climate and growing conditions for all muskmelons are similar. Similar pest problems could be expected, and control of such pests should be similar, regardless of the melon variety. It is reasonably expected that when equal amounts of pesticide are applied to any of the muskmelons for control of a common pest, the residue levels will be similar.

Based on the above information, the Agency concludes that the general commodities melon, muskmelon, sugar apple, and summer squash should be interpreted for tolerance purposes to include the corresponding specific commodities listed above. Therefore, it is proposed that the changes be made as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300234]. All written comments filed in response to this document 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).

Although this regulation does not establish or raise a tolerance level or establish an exemption from the requirement of a tolerance, the impact of the regulation would be the same as establishing new tolerances or exemptions from the requirement of a tolerance. Therefore, the Administrator concludes that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 180

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

Dated: August 15, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1(h) is amended by revising the commodity definition for melons and adding definitions for muskmelons, sugar apple, and summer squash, to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * *	
Melons	Muskmelons, including hybrids and/or varieties of *Cucumis melo* (including true cantaloupe, cantaloupe, casaba, Santa Claus melon, crenshaw melon, honeydew melon, honey balls, Persian melon, golden pershaw melon, mango melon, pineapple melon, snake melon); and watermelons, including hybrids and/or varieties of (*Citrullus* spp.).
Muskmelons	*Cucumis melo* (includes true cantaloupe, cantaloupe, casaba, Santa Claus melon, crenshaw melon, honeydew melon, honey balls, Persian melon, golden pershaw melon, mango melon, pineapple melon, snake melon, and other varieties and/or hybrids of these.
* * * * *	
Sugar apple	*Annona squamosa L.* (sugar apple, sweetsop, anon), and its hybrid *A. squamosa L.* x *A. cherimola M.* (atemoya). Also *A. reticulata L.* (true custard apple).
Summer squash	Fruits of the Gourd (Cucurbitaceae) family that are consumed when immature, 100 percent of the fruit is edible either cooked or raw, once picked it cannot be stored, has a soft rind which is easily penetrated, and if seeds were harvested they would not germinate; e.g., *Cucurbita pepo* (i.e., crookneck squash, straightneck squash, scallop squash, and vegetable marrow); *Lagenaria* spp. (i.e., spaghetti squash, hyotan, cucuzza); *Luffa* spp. (i.e., hechima, Chinese okra); *Memordica* spp. (i.e., bitter melon, balsam pear, balsam apple, Chinese cucumber); and other varieties and/or hybrids of these.
* * * * *	

* * * * *

3. In § 180.34, by revising paragraph (f)(9)(ix), to read as follows:

§ 180.34 Tests on the amount of residue remaining.

* * * * *

(f) * * *

(9) * * *

(ix) Cucurbit vegetables group.

(A) *Commodities.* Balsam pear (bitter melon) (*Mormordica* spp.); Chinese waxgourd (Chinese preserving melon) (*Bernicasa hispida*); citron melon (*Citrullus lanatus*); cucumber (*Cucumis* spp.); gherkin (*Cucumis anguria*); gourds, edible (*Lagenaria* spp., *Luffa acutangula*, *L. cyclindrica*); muskmelon, including hybrids and/or varieties of (*Cucumis melo*) (including true cantaloupe, cantaloupe, casaba, Santa Claus melon, crenshaw melon, honeydew melon, honey balls, Persian melon, golden pershaw melon, mango melon, pineapple melon, snake melon); pumpkin (*Cucurbita* spp.); squash, summer (*Cucurbita pepo* var. *melopepo*); squash, winter (*Cucurbita maxima*, *C. moschata*); watermelon, including hybrids and/or varieties of (*Citrullus* spp.).

(B) *Representative commodities.* Cucumber, muskmelon, and summer squash.

* * * * *

[FR Doc. 91-20990 Filed 9-3-91; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 91-45]

Federal Acquisition Regulation; Advance Agreements, Composition of Total Cost, and Accounting for Unallowable Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are considering changes to the Federal Acquisition Regulation (FAR) to amend sections 31.109, Advance agreements; 31.201-1, Composition of total cost; and 31.201-6, Accounting for allowable costs. These proposed rule changes represent the first in a series, resulting from the Councils' ongoing review of industry recommendations concerning FAR part 31, Contract Cost Principles and Procedures.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before November 4, 1991, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., room 4041, Washington, DC 20405. Please cite FAR case 91-45 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR case 91-45.

SUPPLEMENTARY INFORMATION:

A. Background

As part of the Defense Management Review, the Office of the Secretary of Defense requested comments from industry concerning improvements to the Government's procurement regulations. The Council of Defense and Space Industry Associations (CODSIA) responded with several proposals, including one to revise FAR part 31, Contract Cost Principles and Procedures. CODSIA grouped its recommendations into six areas. Proposed rule changes will be published for public comment as the Councils complete their incremental reviews of CODSIA's recommendations in each of these groupings. However, all resultant final rule changes will be published at one time, at the end of this effort.

This proposal would revise sections 31.109, Advance agreements; 31.201-1, Composition of total cost; and 31.201-6, Accounting for unallowable costs. Specifically, language is added at section 31.109(a) to address the use of advance agreements to clarify allowability issues under the specific cost principles in order to minimize subsequent disputes. The phrase in section 31.109(a), "particularly for firms or their divisions that may not be under effective competitive restraints", is removed because the Councils do not believe that the difficulty of determining the reasonableness, allocability, or allowability under the specific cost principles of a cost is significantly impacted by the business environment in which the industry operates. Changes in section 31.201-1 include removing the word "allowable" in its first sentence; designating the existing paragraph as "(a)"; and adding a new paragraph "(b)" which makes it clear that while the total cost of a contract includes all allocable costs, the total allowable costs on a Government contract are limited to those allocable costs which are allowable pursuant to part 31 and agency supplements. FAR 31.201-6(c) is revised to make it clear that there is no intended difference in the accounting and representation requirements for unallowable costs between contracts which are covered by the Cost Accounting Standards and those which are not.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR case 91-45) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement; Advance agreements; Composition of total cost; and Accounting for unallowable costs.

Dated: August 23, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 31 be amended as set forth below:

1. The authority citation for 48 CFR part 31 continues to read as follows:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.109(a) is revised to read as follows:

31.109 Advance agreements.

(a) The extent of allowability of the costs covered in this part applies broadly to many accounting systems in varying contract situations. Thus, the reasonableness, the allocability, and the allowability under the specific cost principles at 31.2, 31.3, 31.6 and 31.7 of certain costs may be difficult to determine. To avoid possible subsequent disallowance or dispute based on unreasonableness, unallocability, or unallowability under the specific cost principles at 31.2, 31.3, 31.6, and 31.7, contracting officers and contractors should seek advance agreement on the treatment of special or unusual costs. However, an advance agreement is not an absolute requirement and the absence of an advance agreement on any cost will not, in itself, affect the reasonableness, allocability, or allowability under the specific cost principles at 31.2, 31.3, 31.6, and 31.7, of that cost.

* * * * *

3. Section 31.201–1 is amended by designating the current paragraph as "(a)"; by removing the word "allowable" in the first sentence; and by adding paragraph (b) to read as follows:

31.201–1 Composition of total cost.

* * * * *

(b) While the total cost of a contract includes all costs properly allocable to the contract, the allowable costs to the Government are limited to those allocable costs which are allowable pursuant to FAR part 31 and applicable agency supplements.

4. Section 31.201–6(c) is revised to read as follows:

31.201–6 Accounting for unallowable costs.

* * * * *

(c) The practices for accounting for and presentation of unallowable costs will be those as described in FAR 30.405–50.

* * * * *

[FR Doc. 91–21050 Filed 9–3–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AA24

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule: correction.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) is correcting errors in the proposed frameworks for late-season migratory bird hunting regulations that appeared in the **Federal Register** on August 26, 1991 (56 FR 42198).

DATES: Comments due on or before September 6, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: The document published on August 26, contained two errors:

(1) On page 42204, in the section *Written Comments Received,* item 22B *Captive-Reared Mallards,* the Service erroneously published a recommendation by the Atlantic Flyway Council. That action was not taken by the Council; it was tabled and will be considered by the Council at a later date.

(2) On page 42211, in the section *Area, Unit and Zone Descriptions,* under Nebraska duck zones, the description for zone 1, the first sentence should read as follows:

Zone 1: Those portions of Burt, Dakota, and Thurston Counties north and east of a line starting on NE 51 on the Iowa-Nebraska border to U.S. 75, north on U.S. 75 to U.S. 20, west on U.S. 20 to NE 12; west on NE 12 to Boyd County line; to include those portions of Dakota, Dixon, Cedar, and Knox Counties north of NE 12; all of Boyd County; Keya Paha County east of U.S. 183. * * *

The Service will publish the final frameworks on or about September 21, 1991. That document will contain the full zone description for Nebraska.

Dated: August 28, 1991.

Richard N. Smith,

Director.

[FR Doc. 91–21148 Filed 9–3–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 171
Wednesday, September 4, 1991

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 COMMERCE

Agency Information Collection 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: Minority Business Development Agency.

Title: Quarterly Narrative Performance Report.

Form Number: Agency—None OMB Number: 0640–0007.

Type of Request: Reinstatement.

Burden: 440 responses; 7040 reporting hours. Average time is 16 hours.

Needs and Uses: Information is used to compare the individual organization's accomplishments against its performance goals and to evaluate overall results of the agency's funded programs.

Affected Public: Project Operators.

Frequency: Quarterly.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Gary Waxman, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 29, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–21152 Filed 9–3–91; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held September 24, 1991 at 9:30 a.m., in the Herbert C. Hoover Building, room 1617–F, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Military Critical Technologies List (MCTL) into the Export Administration Regulations as needed.

Agenda: General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. MITAC Subcommittee Reports.
5. Discussion of MITAC's Work Plan for 1992.
6. Status of Technical Data Regulations.

Executive Session:

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, TAC Unit/OTPA/EA/BXA; room 1621, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 28, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: August 29, 1991.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 91–21154 Filed 9–3–91; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–588–817]

High Information Content Flat Panel Displays and Display Glass Therefor From Japan: Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: September 4, 1991.

FOR FURTHER INFORMATION CONTACT: Karmi Leiman or Joel Fischl, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–1279 or (202) 377–1778, respectively.

Antidumping Duty Orders

Antidumping Duty Order: Active-Matrix Liquid Crystal High Information Content Flat Panel Displays and Display Glass Therefor from Japan.

Antidumping Duty Order: Electroluminescent High Information Content Flat Panel Displays and Display Glass Therefor from Japan.

Scope or Orders

1. Active-Matrix Liquid Crystal High Information Content Flat Panel Displays and Display Glass Therefor

Active-matrix liquid crystal high information content flat panel displays (active-matrix LCD FPDs) are large area, matrix addressed displays, no greater than four inches in depth, with a picture element (pixel) count of 120,000 or greater, whether complete or incomplete, assembled or unassembled. Active-matrix LCD FPDs utilize a thin-film transistor array to activate liquid crystal at individual pixel locations. Included are monochromatic, limited color, and full color displays used to display text, graphics, and video.

Active-matrix LCD FPD display glass, whether or not integrated with additional components, exclusively dedicated to and designed for use in active-matrix LCD FPDs, is defined as processed glass substrates that incorporate patterned row, column, or both types of electrodes, and also typically incorporate a material that reacts to a change in voltage (*i.e.*, liquid crystal) and contact pads for interconnecting drive electronics.

2. Electroluminescent High Information Content Flat Panel Displays and Display Glass Therefor

Electroluminescent high information content flat panel displays (EL FPDs) are large area, matrix addressed displays, no greater than four inches in depth, with a pixel count of 120,000 or greater, whether complete or incomplete, assembled or unassembled. EL FPDs incorporate a matrix of electrodes that, when activated, apply an electrical current to a solid compound of electroluminescent material (*e.g.*, zinc sulfide) causing it to emit light. Included are monochromatic, limited color, and full color displays used to display text, graphics, and video.

EL FPD display glass, whether or not integrated with additional components, exclusively dedicated to and designed for use in EL FPDs, is defined as processed glass substrates that incorporate patterned row, column, or both types of electrodes, and also typically incorporate a material that reacts to a change in voltage (*e.g.*, phosphor) and contact pads for interconnecting drive electronics.

The scope of these orders does not include passive-matrix liquid crystal high information content flat panel displays and display glass therefor; gas plasma high information content flat panel displays and display glass therefor; segmented flat panel displays; matrix addressed flat panel displays with less than 120,000 pixels; and cathode ray tubes (CRTs).

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on July 8, 1991, the Department made its final determinations that active-matrix LCD FPDs and EL FPDs are being sold at less than fair value (56 FR 32376, July 16, 1991). On August 26, 1991, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that such imports materially injure the U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of active-matrix LCD FPDs and EL FPDs from Japan. These antidumping duties will be assessed on all unliquidated entries of active-matrix LCD FPDs and EL FPDs from Japan entered, or withdrawn from warehouse, for consumption on or after February 21, 1991, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (56 FR 7008).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimate duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Margin percentage
Active-Matrix LCD:	
Hosiden Corporation	62.67
All others	62.67
Electroluminescent:	
Sharp Corporation	7.02
All others	7.02

This notice constitute antidumping duty orders with respect to active-matrix LCD FPDs and EL FPDs from Japan, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: August 27, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-21153 Filed 9-3-91; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review: Certain Mirror-Polished Stainless Steel Sheet

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Review and Request for Comments; Certain Mirror-Polished Stainless Steel Sheet with Non-Directional Unbroken Mirror Finish.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 130 metric tons of certain mirror-polished stainless steel sheet with non-directional, unbroken mirror finish for the period October 1991 through March 1992 under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products ("the U.S.-Japan Arrangement").

SHORT-SUPPLY REVIEW NUMBER: 57.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain mirror-polished stainless steel sheet with a non-directional, unbroken mirror finish for use in decorative architectural applications. On August 28, 1991, the Secretary received an adequate petition from Clark Metals, Inc. ("Clark") requesting a short-supply allowance for 130 metric tons of this product during the period October 1991 through March 1992 under Paragraph 8 of the U.S.-Japan Arrangement. Clark is requesting short supply because it alleges that no U.S. producers produce this material and that regular export licenses are unavailable for this product during this period.

The requested material meets the following specifications:

Raw Material Specifications

UNS Designation: S30400 (Class 1) (Superceded AISI 304)

Pinholes—Not more than 3 pinholes of not larger than 0.08 mm in 300 square meters.

Slivers—Not more than 3 slivers of not longer than 10 mm in one square meter.

Finish

Finish Code "Super No. 8" (non-directional, unbroken mirror)
Surface Roughness—Rmax 0.07–0.09 micron meter

Chemical Composition

	min.	max.
Carbon		0.08
Manganese		2.00
Phosphorus		0.045
Sulfur		0.030
Silicon		1.00
Chromium	18.0	20.00
Nickel	8.0	10.50

Dimensions

thickness—0.8–6.0 mm
width—1,524 mm (5 feet) (max.)
length—4,500 mm (14 feet 8 inches) (max.)

Tolerances

thickness—under 3/16 inch
width—1/16 inch over, 0 under
length—1/4 inch over, 0 under
chamber—1/8 inch

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. Based upon available information, the Secretary believes that the product is not produced in the United States. Therefore, in accordance with section 4(b)(4)(B)(i)(III) of the Act and § 357.106(b)(1)(iii) of Commerce's Short-Supply Procedures, the Secretary is applying a rebuttable presumption that this product is in short supply. Unless domestic steel producers provide comments in response to this notice indicating that they can and will supply this product within the requested period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than September 12, 1991.

Comments: Interested parties wishing to comment upon this review must send written comments not later than September 11, 1991 to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Kathy McNamara or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377–1390 or (202) 377–0159.

Dated: August 29, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–21171 Filed 9–3–91; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to the Export Visa Arrangement for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Union of Soviet Socialist Republics

August 28, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending export visa requirements.

EFFECTIVE DATE: September 11, 1991.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–3400.

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 existing export visa arrangement between the Governments of the United States and the Union of Soviet Socialist Republics is being amended to permit entry of merchandise produced or manufactured in the Soviet Union and entered on and after which is accompanied by replacement visas issued by the Embassy of the Union of Soviet Socialist Republics, Trade Office, in Washington, DC.

The Government of the Union of Soviet Socialist Republics may issue replacement visas from Washington, DC, for shipments which are required to be visaed under the terms of the Bilateral Textile Agreement of December 28, 1989. A Textile Export Visa/Invoice, along with facsimiles of the signatures of authorized issuing officials, is published as an enclosure to the letter to the Commissioner of Customs which follows this notice.

See **Federal Register** notice 55 FR 33745, published on August 17, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 28, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to

you on August 13, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns export visa requirements for certain cotton textile products, produced or manufactured in the Union of Soviet Socialist Republics.

Effective on September 11, 1991, you are directed to amend the August 13, 1990 directive to accept entry of merchandise accompanied by visas issued by the Embassy of the Union of Soviet Socialist Republics in Washington, DC, for merchandise produced or manufactured in the Soviet Union and entered on or after September 11, 1991.

The replacement visa shall consist of a Textile Export Visa/Invoice form bearing an official Soviet Union Embassy embossed stamp on the front in box number 6, along with the signature of an authorized official of the Government of the Union of Soviet Socialist Republics. The embossed stamp must be placed on an original textile Export Visa/Invoice form. This form will include, among other things identified in the visa arrangement, the correct category and quantity, and the standard nine-digit format visa number, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO). The code for the Union of Soviet Socialist Republics is "SU." A sample Textile Export Visa/Invoice form, including facsimiles of the signatures of officials authorized to issue replacement visas, is enclosed.

Shipments which are entered on or after September 11, 1991 which are accompanied by a replacement visa shall be denied if any information required on the replacement visa is missing, incorrect or illegible, or has been crossed out or altered in any way. All previous export visa requirements shall be retained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-F

ТОРГОВОЕ ПРЕДСТАВИТЕЛЬСТВО
СОЮЗА СОВЕТСКИХ СОЦИАЛИСТИЧЕСКИХ
РЕСПУБЛИК
В СОЕДИНЕННЫХ ШТАТАХ АМЕРИКИ

2001 КОННЕКТИКУТ АВЕНЮ, Н.В
Г. ВАШИНГТОН, Д. С. 20008
ТЕЛ. (202) 232-5988
(202) 232-0975
ФАКС (202) 232-2917
ТЕЛЕКС 451324

TRADE REPRESENTATION OF THE
UNION OF SOVIET SOCIALIST REPUBLICS
IN THE UNITED STATES OF
AMERICA

2001 CONNECTICUT AVE., N.W.
WASHINGTON, D. C. 20008
TEL. (202) 232-5988
(202) 232-0975
FAX. (202) 232-2917
TELEX. 451324

TEXTILE EXPORT VISA/INVOICE	VISA NO(S): DATE OF ISSUE:
1) EXPORTER:	6) CATEGORY QUANTITY UNIT U.S. VALUE TOTAL
2) CONSIGNEE:	SIGNING AUTHORITY EITHER (1) Alexander I. Yakovlev Deputy Trade Representative of the USSR in the USA OR (2) SERGEY A. PONOMAREV Senior Economist
3) INVOICE NO(S):	
4) AWB/BILL OF LADING/ENTRY NO:	
5) DESCRIPTION:	

[FR Doc. 91-21088 Filed 9-3-91; 8:45 am]
BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

August 28, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 5, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, 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) 566–8791. 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 for carryover.

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 55 FR 50756, published on December 10, 1990). Also see 55 FR 50862, published on December 11, 1990.

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.

Ronald I. Levin,

of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 28, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on September 5, 1991, you are directed to amend further the directive dated December 5, 1990 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement effected by exchange of notes dated August 21, 1990 and September 28, 1990:

Category	Adjusted twelve-month limit [1]
Group I	
200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870 [2], 369–S [3], 369–O [4], 400–414, 464–469, 600–606, 611, 613/614,615/617, 618, 619/620, 621–624, 625/626/627/628/629, 665, 666, 669–P [5], 669–T [6], 669–O [7], 670–H [8] and 670–O [9], as a group.	536,104,128 square meters equivalent.
Sublevels in Group I	
218	17,955,739 square meters.
219	13,204,413 square meters.
225/317/326	34,080,296 square meters.
300/301/607	1,537,725 kilograms of which not more than 1,281,438 kilograms each shall be in Categories 300, 301 and 607.
313	62,167,086 square meters.
315	18,022,742 square meters.
363	11,787,748 numbers.
369–L/670–L/870	42,238,200 kilograms.
613/614/615/617	16,051,297 square meters.
619/620	11,797,951 square meters.
669–P	279,093 kilograms.
Group II	
237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C [10], 359–H/659–H [11], 359–O [12], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S [13], 659–O [14], 831–844 and 846–859, as a group.	807,290,205 square meters equivalent.
Sublevels in Group II	
239	5,125,750 kilograms.
331	494,711 dozen pairs.
333/334/335	248,460 dozen of which not more than 134,583 dozen shall be in Category 335.
340	1,227,270 dozen.
341	329,891 dozen.
345	100,572 dozen.
350/650	127,513 dozen.
352/652	2,562,226 dozen.
438	26,340 dozen.
442	38,999 dozen.
445/446	132,083 dozen.
636	338,587 dozen.
641	732,511 dozen of which not more than 256,378 dozen shall be in Category 641–Y [15].
642	707,008 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6000 (Category 369–L); and 6307.10.2005 (369–S).

[5] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[6] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[7] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020, 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[8] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[9] Category 670–O: all HTS numbers except4202.22.4030, 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020 (Category 670–L).

[10] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[11] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[12] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020,6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[14] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020,6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[15] Category 641-Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

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,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-21091 Filed 9-3-91; 8:45 am]

BILLING CODE 3510-DR-F

New Visa Stamp for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Peru

August 28, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs authorizing the use of a new visa stamp.

EFFECTIVE DATE: October 15, 1991.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

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 Government of Peru has notified the United States Government that it will begin issuing a new visa stamp to accompany shipments of textile and apparel products, produced or manufactured in Peru and exported to the United States.

See 51 FR 4409, published in the **Federal Register** on February 4, 1986.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 28, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 30, 1986, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, which directed you to prohibit entry and withdrawal from warehouse for consumption in the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Peru for which the Government of Peru has not issued an appropriate export visa or exempt certification.

Effective on October 15, 1991, you are directed to amend further the January 30, 1986 directive to provide for the use of a new visa stamp to accompany shipments of textiles and apparel products, produced or manufactured in Peru and exported from Peru on and after October 15, 1991.

A facsimile of the new visa stamp is enclosed with this letter.[1]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-21090 Filed 9-3-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 16 September 1991 at Fort Bragg, North Carolina to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Public Law 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of title 5, United States Code, this meeting will be closed to the public.

Dated: August 28, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-21131 Filed 9-3-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Intent To Prepare a Supplemental Draft Environmental Impact Statement for the Proposed Dredging of the Thames River, Naval Submarine Base New London, Groton, CT

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act, as implemented by the Council on Environmental Quality regulations, the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs, the Department of the Navy announces its intention to prepare a Supplemental Draft Environmental Impact Statement (SDEIS) for the proposed dredging of the Thames River to allow safe passage of the SEAWOLF (SSN 21) submarine from the mouth of the river to the Naval Submarine Base (SUBASE) New London.

On May 10, 1991, the Navy filed a Draft Environmental Impact Statement (DEIS) with the U.S. Environmental Protection Agency for the proposed dredging of the river in support of the operational evaluation requirements of the SEAWOLF. The first submarine of the SEAWOLF class is currently under construction at the Electric Boat Division of General Dynamics Corporation, located in Groton, Connecticut. Following delivery to the Navy, this submarine (as well as those that follow) must undergo extensive operational and engineering evaluations. These evaluations are conducted by Submarine Development Squadron TWELVE located at SUBASE New London. The DEIS prepared for the proposed dredging of the Thames River was mailed to over 130 officials, agencies and interested citizens, and also placed in area libraries. A public hearing to receive comments on this proposed action was conducted on May 28, 1991, at Mitchell College, New London, Connecticut.

Several comments received during the public comment period requested additional information on the impact of dredging and dredge disposal, particularly as it relates to impacts on the aquatic habitat of the Thames River and Long Island Sound, the location of the New London Disposal Site. In order to further quantify these impacts, the Navy will conduct additional sediment sampling and testing and will prepare an SDEIS to present the finding and results of this effort. Other concerns and issues raised during the DEIS public comment period will also be addressed in the SDEIS.

Agencies and the public are invited and encouraged to provide written comments regarding issues of concern. To be most helpful, these comments should clearly describe specific issues or topics which the commentor believes the SDEIS should address. Written statements and/or questions regarding the SDEIS should be mailed no later than 30 days from date of this publication to the Commanding Officer, Northern Division, Naval Facilities

[1] The new visa stamp is not published with this document.

Engineering Command, Building 77L, U.S. Naval Base, Philadelphia, PA 19112–5000 (ATTN: Code 2022). Additional information about this notice may be obtained by contacting Robert Ostermueller at (215) 897–6263.

Dated: August 29, 1991.

Wayne Baucino,

LT. JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 91–21097 Filed 9–3–91; 8:45 am]

BILLING CODE 3810–AE–M

Intent To Prepare a Supplemental Environmental Impact Statement for Disposal of Material Dredged From Naval Air Station Alameda, California, and Naval Supply Center Oakland, CA, at a Proposed Navy Ocean Disposal Site

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare a Supplemental Environmental Impact Statement (SEIS) for disposal of dredged material from Naval Air Station (NAS) Alameda, California, and Naval Supply Center (NSC) Oakland, California, at a proposed Navy ocean disposal site.

Proposed dredging projects at NAS Alameda and at NSC Oakland have been authorized under the Fiscal Year 1986 Military Construction Program. The estimated quantity of material to be dredged is 600,000 cubic yards and 1,000,000 cubic yards, respectively. Environmental impacts of these projects have been previously studied in a Final Environmental Impact Statement (FEIS) filed with the U.S. Environmental Protection Agency (EPA) in 1990. The FEIS specifically identified and evaluated the impacts of three types of dredge material disposal: In-bay, upland, and deep ocean disposal. Based on an analysis of these alternatives in the FEIS, the Navy concluded, in a Record of Decision (ROD) signed September 25, 1990, that the dredging action is not likely to result in significant adverse impacts and that deep ocean disposal of the dredge material is the most feasible disposal alternative for this project. A former Navy munitions dumpsite, approximately 42 nautical miles (nm) west/southwest of the Golden Gate Bridge and 16 nm west of the Farallon Islands, was selected as the proposed ocean disposal site. The 36 square nm site ranges from 6,600 feet to 10,000 feet in depth. Initial Navy studies (included in the FEIS) led to a conclusion that there are not likely to be significant impacts from disposal at this site.

The Navy, however, agreed in the ROD to prepare an SEIS that would further evaluate this particular deep ocean site as the Navy's ocean disposal site for these projects and to conduct additional studies and physical impact monitoring at this site. Since then, the Navy has conducted a series of site-specific studies, with the remainder in progress. Interim study results continue to support the initial conclusion that this site will meet ocean disposal criteria. Data from these studies will be incorporated into the SEIS and other related documents required by the U.S. Army Corps of Engineers (COE) and EPA for permitting the ocean disposal of dredged material in accordance with section 103 of the Marine Protection, Research, and Sanctuaries Act. All site characterization studies to be conducted, especially those that could affect the adjacent Farallon National Marine Sanctuary, will be coordinated with applicable regulatory and resource agencies to assure that all research authorizations required by law are obtained. The SEIS and associated studies have two goals. The first is to resolve remaining issues raised as a result of the previous EIS process, such as sediment quality, predicted plume size, and water quality at the adjacent Farallon National Marine Sanctuary. The second goal is to provide detailed information on the proposed Navy ocean disposal site and the potential and actual environmental effects of the dredge disposal.

Agencies and the public are invited and encouraged to provide written comments regarding issues of concern. To be most helpful, these comments should clearly describe specific issues or topics which the commentor believes the SEIS should address. Written statements and/or questions regarding the SEIS should be mailed no later than 30 days from date of this publication to Mr. Dean Smith, Code 2032, telephone (415) 244–3728, Western Division, Naval Facilities Engineering Command, P.O. Box 727, San Bruno, California 94066–0720.

Dated: August 29, 1991.

Wayne Baucino,

LT. JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 91–21098 Filed 9–3–91; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Determination to Establish the Secretary of Energy Advisory Board Task Force on Energy Research Priorities

Pursuant to section 9(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), and in accordance with 41 CFR part 101–6, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Secretary of Energy Advisory Board Task Force on Energy Research Priorities has been established.

The Task Force will provide advice to the Secretary of Energy on priorities and program balance for the research and development responsibilities, activities, and operations of the Office of Energy Research of the Department of Energy.

The membership of the Task Force shall include approximately 10 to 20 individuals, selected on the basis of their professional experience and competence in areas related to the research and development responsibilities of the Office of Energy Research. Appointments will be made for up to one year. Particular attention will also be paid to obtaining a balance of interests, points of view, and geography.

The establishment of the Secretary of Energy Advisory Board Task Force on Energy Research Priorities has been determined necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Task Force will operate in accordance with the provisions of FACA, the Department of Energy Organization Act, the GSA Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee can be obtained from Frederica Cravens (202/586–3282).

Issued in Washington, DC on August 29, 1991.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 91–21099 Filed 8–29–91; 11:19 am]

BILLING CODE 6450–01–M

Study of Fracture Characterization and Fluid Flow

AGENCY: U.S. Department of Energy.

ACTION: Notice of non-competitive financial assistance (grant) award with National Academy of Science.

SUMMARY: The Department of Energy-Pittsburgh Energy Technology Center (DOE–PETC) announces that pursuant to 10 CFR 600.7 (b)(2)(i) criterion (D) it intends to make a non-competitive financial assistance award (grant) to the National Academy of Science for Support of the Study of Fracture Characterization and Fluid Flow.

SUPPLEMENTARY INFORMATION: The objective of this grant is to: Partially support the "Study of Fracture Characterization and Fluid Flow" by members of the U.S. National Committee for Rock Mechanics; a standing committee of the Geotechnical Board under the National Academy of Sciences/National Research Council-Commission on Engineering and Technical Systems. The study will: (1) Review characterization of fracture networks and fluid flow in rock fractures, (2) provide a statement of current research, and (3) offer guidance for field applications. The review will include recent research in fracture origin, morphology, geophysical imaging, flow and transport analysis, and modeling. Multiple applications of this information will be addressed in this effort, including fracture petroleum reservoirs.

In accordance with 10 CFR 600.7 (b)(2)(i) criterion (D) the National Academy of Science has been selected as the grant recipient. DOE support of the activity would enhance the public benefits in that it will allow DOE to move effectively focus research dollars on high priority, state-of-the-art research needs in fracture characterization and fluid flow in rock fractures. Communication between DOE personnel, members of the Geotechnical Board, and the membership of the National Academy of Sciences/National Research Council, will aid in identifying future research needs as they relate to the application in hydrocarbon reservoirs. Further, this project will foster and accelerate the exchange of ideas between various members of the scientific community. Furthermore, DOE has determined that a competitive solicitation would be inappropriate. The term of the grant is for a twelve (12) month period at an estimated value of $116,000. This is a cost share effort. The total estimated DOE funding will be $10,000. The remainder will be the result of other contributing organizations.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn: Cynthia Y. Mitchell, Telephone: AC (412) 892–4862.

Dated: August 26, 1991.

Carroll A. Lambton,

Director, Acquisition and Assistance Division, PETC.

[FR Doc. 91–21100 Filed 9–3–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER91–596–000, et al.]

Florida Power Corp., et al., Electric rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. ER91–596–000]

August 26, 1991.

Take notice that on August 20, 1991, Florida Power Corporation (FPC) tendered for filing a contract for interchange service between FPC and Seminole Electric Cooperative, Inc. (Seminole). The contract supersedes the Contract For Interchange Service between FPC and Seminole dated August 1, 1983 and designated Rate Schedule FPC No. 97. FPC requests that the contract be made effective and requests waiver of the 60-day notice requirement pursuant to § 35.3 in order to allow for the September 1, 1991 effective date.

FPC states that a copy of the filing has been posed as required by the Commission's regulations, and a copy has been mailed to the customer affected by the filing and to the Florida Public Service Commission. The affected customer is entirely located in the State of Florida.

Comment date: September 9, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Power & Light Company

[Docket No. ER91–591–000]

August 26, 1991.

Take notice that on August 16, 1991, Wisconsin Power & Light Company (WPL) tendered for filing a notice of termination of a Power Pool Agreement among WPL, Madison Gas & Electric Company and Wisconsin Public Service Corporation, dated July 26, 1973, as supplemented. The Power Pool Agreement is designated as Wisconsin Power & Light Company Rate Schedule FERC No. 99.

WPL requests waiver of the Commission's notice requirements in order to permit an effective date of August 1, 1991, for termination of WPL's participation in the Power Pool Agreement, as agreed by the parties.

Copies of the filing have been sent to Madison Gas & Electric Company, Wisconsin Public Service Corporation and the Public Service Commission of Wisconsin.

Comment date: September 9, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Northeast Utilities Service Company

[Docket No. ER91–594–000]

August 26, 1991.

Take notice that on August 19, 1991, Northeast Utilities Service Company (NUSCO) acting as Agent for The Connecticut Light and Power Company (CL&P) Western Massachusetts Electric Company (WMECO, and together with CL&P, the NU Companies) tendered for filing as a rate schedule an agreement (the Agreement) between NUSCO and Braintree Electric Light Department (Braintree). The Agreement, dated as of March 12, 1988, provides for the economic exchange of capacity and the associated energy from the NU Companies' and Braintree's generating units/entitlements on a weekly or monthly basis (an exchange).

NUSCO requests that the Commission waive its customary notice period and allow the Agreement to become effective on March 12, 1988.

The Agreement has been executed by the NU Companies and by Braintree and copies have been mailed or delivered to each of them and the Commonwealth of Massachusetts, Department of Public Utilities.

Comment date: September 9, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Ohio Power Company

[Docket No. ER91–589–000]

August 26, 1991.

Take notice that American Electric Power Service Corporation (AEPSC) on August 15, 1991 tendered for filing on behalf of its American Electric Power System affiliate, Ohio Power Company (OPCO), Supplement No. 12 dated August 1, 1991 to the Agreement dated April 1, 1974 between OPCO and American Municipal Power-Ohio (AMP-Ohio), OPCO Rate Schedule FERC No. 74.

The supplement agreement revises AMP-Ohio's and OPCO's Non-Displacement power rates. An effective date of August 15, 1991 has been requested for service pursuant to the supplement.

A copy of the filing was served upon the Public Utilities Commission of Ohio.

Comment date: September 9, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Ocean State Power II

[Docket No. ER91–595–000]

August 26, 1991.

Take notice that Ocean State Power II ("OSP II"), on August 19, 1991, tendered for filing the following supplements (the "Supplements") to its rate schedules with the Federal Energy Regulatory Commission (the "Commission"):

Supplement No. 11 to Rate Schedule FERC No. 5
Supplement No. 11 to Rate Schedule FERC No. 6

The Supplements to the rate schedules request approval of OSP II's proposed rate for test power to be sold to Boston Edison Company and New England Power Company and otherwise unsold under OSP II's unit power agreements (the "Agreements") between OSP II and Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation, respectively. The Supplements do not constitute a rate increase.

Ocean State Power has requested that the Supplements be permitted to become effective without suspension as of July 1, 1991.

Copies of the filing have been served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada PipeLines Limited.

Comment date: September 9, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Kentucky Utilities Company

[Docket No. ER91–590–000]

August 26, 1991.

Take notice that on August 16, 1991, Kentucky Utilities Company (KU) tendered for filing a Letter Agreement dated July 16, 1991 between KU and Tennessee Valley Authority (TVA). The Letter Agreement supplements and amends the Interconnection Agreement dated March 22, 1951 (TVA designation TV–11505A).

The Letter Agreement modifies charges under schedules for Emergency Energy, Short-Term Power, Non-replacement Energy and Third Party Transactions, and modifies some operating procedures and notices between the parties.

Copies of this filing have been sent to TVA and the Public Service Commission of Kentucky.

Comment date: September 9, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. California Energy Company, Inc.

[Docket No. EL91–52–000]

August 26, 1991.

Take notice that on August 23, 1991, California Energy Company, Inc. ("California Energy") submitted for filing a petition for enforcement pursuant to section 210(h)(2)(B) of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 U.S.C. 824a–3(h)(2)(B), and Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207. California Energy states in this petition that the California Public Utilities Commission ("CPUC"): (i) Has failed to implement the Commission's regulations regarding assessment of "interconnection costs" on a qualified facility, 18 CFR 292.306(a) and 292.101(b)(7), in contravention of section 210(f) of PURPA and 18 CFR 292.401; (ii) that, in its Decision No. 90–09–059, the CPUC implemented an unlawfully discriminatory interconnection cost allocation rule in violation of section 306(a) of the Commission's regulations; and (iii) that, in its Decision No. 90–09–059, the CPUC materially revised its implementation of PURPA rules without providing the notice to the public and an opportunity for public hearing required by section 210(f) of PURPA and 18 CFR 292.401(a). California Energy requests the Commission to undertake an enforcement action against the CPUC and direct the CPUC to vacate its Decision No. 90–09–059.

Comment date: September 25, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Electric Company

[Docket No. ER–91–313–000]

August 26, 1991.

Take notice that on August 20, 1991, Pennsylvania Electric Company (Penelec) tendered for filing an amendment to its filing of March 8, 1991 of an initial rate schedule for transmission services to Penntech Papers, Inc. (Penntech). The amendment contains additional information regarding the proposed Transmission Services Agreement between Penelec and Penntech which had been requested by the Commission.

Comment date: September 9, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Georgia Power Company

[Docket Nos. ER91–171–000, ER91–204–000 and ER91–205–000]

August 27, 1991.

Take notice that on August 23, 1991, Georgia Power Company (Georgia Power) tendered for filing its response to a request by the Commission for supplemental information concerning Georgia Power's December 21, 1990 filing of a Revised and Restated Integrated Transmission System Agreement, a Block Power Sale Agreement and a Coordination Services Agreement with Oglethorpe Power Corporation.

Georgia Power states that the supplemental information provided in this filing addresses questions raised by the Commission in response to the aforementioned December 21, 1990 filings.

Comment date: September 10, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. AES CB Limited Partnership

[Docket No. QF89–126–003]

August 27, 1991.

On August 15, 1991, AES CB Limited Partnership (Applicant) of 1001 N. 19th Street, suite 2000, Arlington, Virginia 22209, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed 269 MW topping-cycle cogeneration facility will be located adjacent to the Seminole Kraft paper mill in Jacksonville, Florida. The facility will consist of three fluidized bed combustion boilers and an extraction/condensing steam turbine generator. The original certification was issued on March 21, 1989, 46 FERC ¶ 62,284 (1989) and a subsequent recertification was issued on January 16, 1991, 54 FERC ¶ 62,018 (1991). The instant recertification is requested to reflect a change in ownership from AES Cedar Bay, Inc. to AES CB Limited Partnership and the addition of an alternative steam customer, an on-site carbon dioxide production facility.

Comment date: October 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Pennsylvania Power & Light Company

[Docket No. ER91–600–000]

August 27, 1991

Take notice that Pennsylvania Power & Light Company (PP&L) on August 22,

1991, tendered for filing an executed agreement dated as of August 5, 1991, between PP&L and Long Island Lighting Company (LILCO). The proposed rate schedule provides for the short-term, interruptible sale of electric power from PP&L's electric generating system to LILCO.

The rate schedule provides for a maximum Energy Reservation Charge of $24.70 per megawatt per week, based on the capital costs of PP&L's oil-fired Martins Creek Units 3 and 4. The total charges curing each reservation period are a function of the actual Energy Reservation Charge negotiated by PP&L and LILCO and an Energy Charge equal to PP&L's incremental cost to produce the energy during the reservation period. Energy will be transmitted by PP&L to the portion of the Branchburg-Ramapo 500 kv transmission line owned by the Consolidated Edison Company of New York, for delivery to LILCO.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of August 26, 1991. Initial service under the Agreement has not been scheduled, but will not begin before the requested effective date.

PP&L states that a copy of its filing was served on LILCO, Consolidated Edison Company of New York, the Pennsylvania Public Utility Commission and the New York Public Service Commission.

Comment date: September 10, 1991 in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-21062 Filed 9-3-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2838-000, et al.]

Northern Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP91-2838-000]

August 26, 1991.

Take notice that on August 21, 1991, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed a request with the Commission in Docket No. CP91-2838-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate facilities for one new jurisdictional delivery point and to transport natural gas for the City of Fairbank, Iowa (Fairbank), a new municipal natural gas utility, under the blanket certificates issued by the Commission under §§ 157.203 and 284.221 of the Commission's Regulations pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Northern proposes to construct and operate the Fairbank delivery point and appurtenant facilities to accommodate the proposed transportation service for Fairbank. It is stated that Northern would transport gas on an interruptible basis for redelivery by Fairbank in the vicinity of Fairbank, Iowa, for residential and commercial end uses, pursuant to the terms of Northern's Rate Schedule IT-1 and a transportation agreement dated August 19, 1991. Northern states that it would deliver a total of 450 Mcf of natural gas on a peak day, 164 Mcf on an average day and 60,000 Mcf on an annual basis to Fairbank. The cost of the proposed delivery point is estimated at $10,700. It is stated that the proposed deliveries would increase Northern's peak day deliveries by 450 Mcf and annual deliveries by 60,000 Mcf.

Comment date: October 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. ANR Pipeline Co. and Natural Gas Pipeline Co. of America

[Docket Nos. CP91-2864-000, CP91-2865-000, CP91-2866-000]

August 26, 1991.

Take notice that on August 23, 1991, ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, and Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88-532-000, and Docket No. CP86-582-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: October 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (dated filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2864-000 (8-23-91)	Conoco, Inc. (Marketer)	[2] 75,000 75,000 27,375,000	OLA	LA, OH	10-23-90, ITS, interruptible.	ST91-9490-000, 6-22-91.

Docket No. (dated filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2865-000 (8-23-91)	Unicorp Energy Inc. (Marketer).	50,000 20,000 7,300,000	Various	Various	10-17-88,[3] ITS, interruptible.	ST91-9830-000, 7-1-91.
CP91-2866-000 (8-23-91)	Hadson Gas Systems, Inc. (Marketer).	100,000 50,000 18,250,000	Various	Various	12-10-90, ITS, interruptible.	ST91-9803-000, 7-1-91.

[1] Offshore Louisiana is shown as OLA.
[2] ANR's quantities are in dekatherms.
[3] As amended.

3. United Gas Pipe Line Co. and Columbia Gas Transmission Corp.

[Docket Nos. CP91-2843-000, CP91-2844-000, CP91-2845-000, CP91-2846-000, CP91-2847-000, and CP91-2848-000]

August 26, 1991.

Take notice that on August 21, 1991, United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, and Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88-6-000 and Docket No. CP86-240-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: October 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2843-000 (8-21-91)	International Paper Company (end-user).	103,000 103,000 37,595,000	Various	LA, AL, FL, MS	4-26-90, ITS, Interruptible.	ST91-9951-000, 7-30-91.
CP91-2844-000 (8-21-91)	CNG Trading Company (marketer).	30,900 30,900 11,278,500	MS, TX, On LA, Off LA	On LA, FL, MS	10-3-88, ITS, Interruptible.	ST91-9955-000, 7-31-91.
CP91-2845-000 (8-21-91)	Aquila Energy Marketing (marketer).	154,500 154,500 56,392,500	Various	On LA, FL, MS, AL	3-14-89, ITS, Interruptible.	ST91-9954-000, 8-1-91.
CP91-2846-000 (8-21-91)	Delhi Gas Pipeline Corporation (intrastate pipeline).	103,000 103,000 37,595,000	On LA, Off LA, TX, OK	On LA, TX, OK	2-23-88, ITS, Interruptible.	ST91-9950-000, 7-25-91.
CP91-2847-000 (8-21-91)	Energy Marketing Services, Inc. (shipper).	46 37 16,790	OH	PA	7-1-91, OPT, Firm	ST91-9756-000, 7-1-91.
CP91-2848-000 (8-21-91)	Energy Marketing Services, Inc. (shipper).	1,880 1,504 686,200	KY, WV	PA	7-1-91, OPT, Firm	ST91-9687-000, 7-1-91.

4. Williston Basin Interstate Pipeline Company

[Docket No. CP91-2855-000]

August 26, 1991.

Take notice that on August 21, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed a request with the Commission in Docket No. CP91-2855-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to add delivery points to its currently authorized transportation service for Rainbow Gas Company (Rainbow), a marketer of natural gas under its blanket certificate issued by the Commission in Docket No. CP89-1118-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Williston Basin proposes to designate additional delivery points utilizing existing facilities, as detailed in the transportation agreement dated August 24, 1990, as amended November 29, 1990. It is stated that Williston Basin was authorized in Docket No. CP91-450-000 to transport up to 189,812 dt equivalent of natural gas on an interruptible basis for Rainbow pursuant to the terms of Williston Basin's Rate Schedule IT-1, and commenced the transportation service on November 29, 1990, as reported in Docket No. ST91-5565. It is explained that the instant filing seeks only to add the delivery points listed in the amended agreement and that the

volumes transported would remain within the authorized limits.

Comment date: October 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. Columbia Gas Transmission Corporation

[Docket Nos. CP91–2828–000, CP91–2829–000, CP91–2830–000, CP91–2831–000, CP91–2832–000, CP91–2833–000]

August 27, 1991.

Take notice that Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86–240–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

[3] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: October 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMbtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91–2828–000 (8–20–91)	Bethlehem Steel Corporation (end-user).	5,000 4,000 11,825,000	OH	PA	OPT, Firm	ST91–9761, 7–1–91.
CP91–2829–000 (8–20–91)	Brooklyn Interstate Natural Gas Corp. (marketer).	10,000 8,000 3,650,000	Various	Various	ITS, Interruptible	ST91–9573, 7–10–91.
CP91–2830–000 (8–20–91)	Interstate Natural Gas Company (producer).	500 400 182,500	Various	Various	ITS, Interruptible	ST91–9515, 7–10–91.
CP91–2831–000 (8–20–91)	Volunteer Energy Corporation (marketer).	10,000 8,000 3,650,000	Various	Various	ITS, Interruptible	ST91–9572, 6–1–91.
CP91–2832–000 (8–20–91)	Bethlehem Steel Corporation (end user).	10,000 8,000 3,650,000	KY	MD	OPT, Firm	ST91–9691, 7–1–91.
CP91–2833–000 (8–20–91)	Manville Sales Corporation (end user).	2,500 2,000 912,500	Various	OH	ITS, Interruptible	ST91–9760, 7–1–91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

6. Northern Natural Gas Company

[Docket No. CP91–2799–000

August 27, 1991.

Take notice that on August 15, 1991, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a request with the Commission in Docket No. CP91–2799–000, pursuant to section 7(c) of the Natural Gas Act and §§ 157.7 and 157.14 of the Commission's Regulations thereunder, for issuance of a certificate of public convenience and necessity authorizing Northern to establish jurisdictional sales service for Sheehan's Natural Gas Inc. (Sheehan's), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that this authorization is requested in order for Sheehan's to serve new markets and increasing gas needs of its existing customers in Minnesota. Northern states that it is requesting that the sales service become effective on November 1, 1991, or such date as approved by the Commission, whichever is later.

Northern further states that the additional sales service can be accomplished without constructing new facilities or rearranging presently authorized facilities.

It is asserted that Northern and Sheehan's have entered into new service agreements dated May 24, 1991. The level of service requested is 5 Mcf per day under Northern's currently effective CD–1 Rate Schedule and 200 Mcf per day under Northern's currently effective SS–1 Rate Schedule.

It is also asserted that Northern's Settlement provides for "unbundling of services. When the Settlement becomes effective, the entitlement levels and terms of service for Sheehan's would be comparable to the level of service requested under currently effective Rate Schedules. Specifically, the entitlement levels and terms of service for Sheehan's would be as follows: SF Entitlements (Daily Contract Quantity), 5 Mcf per day under the SF12 Rate Schedule and 200 Mcf per day under the SF5 Rate Schedule.

Comment date: September 17, 1991, in accordance with Standard Paragraph F at the end of this notice.

7. El Paso Natural Gas Company

[Docket No. CP91–2809–000]

August 27, 1991.

Take notice that on August 19, 1991, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed a request with the Commission in Docket No. CP91–2809–000, pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon a gas transportation exchange agreement between El Paso, KN Energy, Inc. (KN), and Panhandle Eastern Pipe Line Company (Panhandle) and the tap and valve facilities comprising the Hemphill County balancing point, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that it proposes to abandon a gas exchange agreement dated June 17, 1974, as amended, with KN and Panhandle. It is stated that the service was authorized by the Commission at Docket Nos. CP75–1 (El Paso), CP75–27 (KN), and CP75–314 (Panhandle). It is indicated that the exchange is performed under El Paso's Rate Schedule X–34, KN's Rate Schedule X–3, and Panhandle's Rate Schedule E–4. El Paso states that the three companies have mutually agreed to terminate the exchange agreement. With the implementation of open-access transportation services by each of these companies, the exchange agreement is no longer necessary to allow the movement of the subject gas.

El Paso states that KN has requested permission and approval for the abandonment of this exchange service at Docket No. CP91–1732, filed April 8, 1991, and Panhandle has requested permission and approval for the same abandonment at Docket No. CP91–2167, filed June 3, 1991. El Paso further states that the Commission granted KN permission and approval to abandon the exchange by order issued July 8, 1991.

Comment date: September 17, 1991, in accordance with Standard Paragraph F at the end of the notice.

8. United Gas Pipe Line Company

[Docket No. CP91–2857–000]

August 27, 1991.

Take notice that on August 21, 1991, United Gas Pipe Line Company (United), (P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP91–2857–000 an application pursuant to section 7(c) of the Commission's Regulations under the Natural Gas Act for authorization to transport and deliver up to 7,500 Mcf of natural gas per day for direct sale to Agrico Chemical Company (Agrico), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, United requests authorization to transport and deliver natural gas necessary to make a direct sale to Agrico at its Uncle Sam Chemical Plant in St. James Parish, Louisiana. United states that in compliance with recent Commission orders, the rate charged to Agrico for the direct sale contains a transportation component which is United's applicable maximum part 284 firm transportation rate calculated on a 100.0% load factor basis.

United states that no new facilities are proposed herein; however, on August 19, 1991, pursuant to § 157.211 of the Commission's Regulations, United made a prior notice filing in Docket No. CP91–2812–000 which specifies United's intention to construct a sales tap and related facilities for delivery of natural gas to Agrico.

United states that implementation of the firm gas sales contract is in the public interest because it would provide an opportunity for Agrico to obtain supplies of natural gas at a competitive price.

Comment date: September 17, 1991, in accordance with Standard Paragraph F at the end of this notice.

9. Williston Basin Interstate Pipeline Company

[Docket No. CP91–2884–000]

August 27, 1991.

Take notice that on August 23, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP91–2884–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new metering station and appurtenant facilities under Williston Basin's blanket certificate issued in Docket No. CP82–487–000, *et al.* pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to construct and operate a new metering station and appurtenant facilities as part of a relocation project requested by one of its local distribution sales customers, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., (Montana-Dakota), at Cowley, Wyoming. Williston Basin states that the estimated cost of the new metering facility is $17,560 which cost would be entirely reimbursed by Montana-Dakota. It is stated that the proposed meter station would be located on existing pipeline right-of-way in Big Horn County, Wyoming (SW ¼ of Sec. 16, T57N, R96W). Williston Basin states that the relocation of the town border station would have no effect on its peak or annual requirements. The related application to abandon the existing Cowley town border station has been filed concurrently in Docket No. CP91–2377–000.

Comment date: October 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

10. Williston Basin Interstate Pipeline Company

[Docket No. CP91–2877–000]

August 27, 1991.

Take notice that on August 23, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP91–2877–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon two sales taps and appurtenant facilities under Williston Basin's blanket certificate issued in Docket No. CP82–487–000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon two Big Horn County, Wyoming, sales taps and appurtenant facilities located on its natural gas transmission system. It is stated that the customer, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., (Montana-Dakota), no longer requires service through these taps known as the Cowley town border station. It is explained that such border station (presently connected to the taps) is being relocated at the request of Montana-Dakota. Williston Basin has advised that the new station would be constructed and operated under prior notice type authorization requested concurrently in Docket No. CP91–2884–000.

Comment date: October 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

11. Maxus Exploration Company and Diamond Shamrock Offshore Partners Limited Partnership

[Docket No. CI91–119–000]

August 27, 1991.

Take notice that on August 20, 1991, Maxus Exploration Company (Maxus) and Diamond Shamrock Offshore Partners Limited Partnership (DSP) of 717 N. Harwood Street, Dallas, Texas 75201, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate to authorize jurisdictional sales of gas under contracts to which Maxus or DSP is or becomes a successor-in-interest prior to the effective date of total decontrol under the Natural Gas Wellhead Decontrol Act of 1989, all as more fully set forth in the application which is on file with the Commission

and open for public inspection. Maxus and DSP also request that the Commission waive its regulations regarding the establishment of rate schedules.

Comment date: September 16, 1991, in accordance with Standard Paragraph J at the end of this notice.

12. Columbia Gas Transmission Corp.; Williston Basin Interstate Pipeline Co.; Southern Natural Gas Co.; Williston Basin Interstate Pipeline Co.

[Docket No. CP91-2849-000,[4] CP91-2850-000, CP91-2851-000; CP91-2852-000; CP91-2853-000; CP91-2856-000]

August 27, 1991.

Take notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 294.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: October 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notices requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day, average, annual [1]	Points of [2]		Start up date, rate schedule	Related [3] dockets
				Receipt	Delivery		
CP91-2849-000 (8-21-91)	Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314.	Energy Marketing Services, Inc.	450 360 164,250	OH, KY	NY	07-01-91, OPT, Firm.	ST91-9689-000, CP86-240-000.
CP91-2850-000 (8-21-91)	Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314.	Energy Marketing Services, Inc.	258 206 94,170	WV	MD	07-01-91, OPT, Firm.	ST91-9690-000, CP86-240-000.
CP91-2851-000 (8-21-91)	Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314.	Energy Marketing Services, Inc.	815 652 297,475	OH	PA	07-01-91, OPT, Firm.	ST91-9692-000, CP86-240-000.
CP91-2852-000 (8-21-91)	Williston Basin Interstate Pipeline Company, Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501.	Farmers Union Central Exchange, Incorporated.	1,030 1,030 375,950	WY	MT	05-15-91, IT-1	ST91-9038-000, CP89-1118-000.
CP91-2853-000 (8-21-91)	Southern Natural Gas Company, P.O. Box 2563 Birmingham, Alabama 35202-2563.	Amoco Energy Trading Corporation.	100,000 10,000 3,650,000	OTX, TX, OLA, LA, MS, AL.	LA	06-26-91, IT	ST91-9696-000, CP88-316-000.
CP91-2856-000 (8-21-91)	Williston Basin Interstate Pipeline Company, Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501.	Exxon Corporation.	2,220 2,220 803,000	WY, ND, MT	MT, WY	11-29-90, IT-1	ST91-6136-000, CP89-1118-000.

[1] Quantities are shown in MMBtu for Columbia and Southern; and in dt for Williston.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX, respectively.
[3] The CP and RP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

13. Viking Gas Transmission Co. and Transwestern Pipeline Co.

[Docket Nos. CP91-2859-000, CP91-2860-000, CP91-2861-000, CP91-2862-000, CP91-2863-000]

August 27, 1991.

Take notice that Applicants filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificate pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

[5] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: October 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type shipper)	Peak day,[1] average annual	Points of		Start up date, rate schedule	Related[2] dockets
			Receipt	Delivery		
Applicant: Viking Gas Transmission Company, P.O. Box 2511, Houston, TX 77252 Blanket Certificate Issued in Docket No.: CP-273-000						
CP91-2859-000 (08-22-91)	Colonial Gas Company (LDC).	97,000 97,000 35,405,000	MN, WI, ND	MN, WI, ND	07-12-91, IT-2	ST91-9935-000.
Applicant: Transwestern Pipeline Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188 Blanket Certificate Issued in Docket No.: CP88-133-000						
CP91-2860-000 (08-22-91)	Eastex Hydrocarbons, Inc. (marketer).	[3] 50,000 37,500 18,250,000	AZ, NM, OK, TX	AZ, NM, OK, TX	07-21-91, ITS-1	ST91-9991-000.
CP91-2861-000 (08-22-91)	Enron Gas Marketing, Inc. (marketer).	750,000 562,500 273,750,000	AZ, NM, OK, TX	AZ, OK, TX	07-19-91, ITS-1	ST91-9964-000.
CP91-2862-000 (08-22-91)	American Hunter Exploration LTD (marketer).	200,000 150,000 73,000,000	AZ, NM, OK, TX	AZ, NM, OK, TX	08-01-91, ITS-1	ST91-9989-000.
CP91-2863-000 (08-22-91)	Mock Resources, Inc. (marketer).	100,000 75,000 36,500,000	AZ, NM, OK, TX	AZ, NM, OK, TX	08-01-91, ITS-1	ST91-9990-000.

[1] Quantities are shown in Dth unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.
[3] Quantities are shown in MMBtu unless otherwise indicated.

14. Natural Gas Pipeline Company of America

[Docket Nos. CP91-2867-000, CP91-2868-000]

August 27, 1991.

Take notice that Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the natural Gas Act for authorization to transport Natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-582-000, Pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

[6] These prior notice requests are not consolidated.

Comment date: October 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed	Shipper name (type)	Peak day, Average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule service type	Related docket, start up date
CP91-2867-000 (08-23-91)	Equitable Resources Marketing (marketer).	100,000 40,000 14,600,000	Various	Various	12-06-90, ITS, Interruptible.	ST91-9829, 07-01-91.
CP91-2868-000 (08-23-91)	International Paper Company (end-user).	5,000 5,000 1,825,000	Various	Clark County, Arkansas	07-01-91, FTS, Firm.	ST91-9828, 07-01-91.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-21063 Filed 9-3-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of August 2 Through August 9, 1991

During the Week of August 2 through August 9, 1991, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 26, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 2 through August 9, 1991]

Date	Name and location of applicant	Case No.	Type of submission
August 5, 1991	Sauvage/Joel Wilkinson/H.C. Oil Co., St. Louis, MO.	RR308-8	Request for modification/rescission in the Sauvage Refund Proceeding. *If Granted:* The July 9, 1991 Decision and Order (Case No. RF308-20 and RF308-7) would be modified regarding the firm's application for refund submitted in the Sauvage refund proceeding.
August 6, 1991	Local Oil Company, Inc., Anoka, MN	LEE-0025	Exception to the reporting requirements. *If Granted:* Local Oil Company would not be required to file form EIA-782B, "Resellers/ Retailers' Monthly Petroleum Product Sales Report."
August 9, 1991	Gulf/Bill's Holiday Inn Gulf, Woodbridge, VA	RR300-98	Request for modification/rescission in the Gulf Refund Proceeding. *If Granted:* The June 21, 1991 Decision and Order (Case No. RF300-11529) issued to Bill's Holiday Inn Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
August 9, 1991	Gulf/Hoff Oil Company, Washington, DC	RR300-99	Request for modification/rescission in the Gulf Refund Proceeding. *If Granted:* The November 10, 1988 Decision and Order (Case No. RF300-2670) issued to Hoff Oil Company.
August 9, 1991	Gulf/Hoff Oil Company, Washington, DC	RR300-99	Request for modification/rescission in the Gulf Refund Proceeding. *If Granted:* The November 10, 1988 Decision and Order (Case No. RF300-2670) issued to Hoff Oil Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

Date received	Name of refund proceeding/name of refund application	Case No.
8/5/91	Department of Water & Power	RF336-23
8/5/91	McManus Oil & L.P. Gas Co.	RF340-10
8/5/91	Con. Ed. Co. of New York Inc.	RF339-3
8/5/91	Gerken Materials, Inc.	RF272-132
8/6/91	Dext Co.	RF341-4
8/6/91	Clarence & Barbel King	RF335-38
8/2/91 thru 8/9/91	Texaco Refund, Application Received	RF321-16338 thru RF321-16376
8/2/91 thru 8/9/91	Atlantic Richfield, Applications Received	RF304-12385 thru RF304-12422
8/2/91 thru 8/9/91	Crude Oil, Applications Received	RF272-89538 thru RF272-89554
8/2/91 thru 8/9/91	Gulf Oil Refund, Applications Received	RF300-17387 thru RF30-17400
8/2/91 thru 8/9/91	Quantum Refund, Applications Received	RF330-37 thru RF330-52

[FR Doc. 91-21101 Filed 9-3-91; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-3992-6]

Draft 1991 Transportation-Air Quality Planning Guidelines; Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: The Draft copy of the 1991 Transportation-Air Quality Planning Guidelines, including guidance on the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of the National Ambient Air Quality Standards, is currently available for public comment.

DATES: The public comment period will end October 4, 1991.

ADDRESSES: Photocopies of the document may be requested from: Ms. Norma Gray, Technical Support Staff, U.S. EPA Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Phone: 313-668-4417, FTS 374-4417 Fax: 313-668-4368, FTS 374-8368. A copy of the document will be available for public view at the same address in the Motor Vehicle Emission Laboratory Library under the title, "The 1991 Transportation-Air Quality Planning Guidelines."

FOR FURTHER INFORMATION CONTACT: Ms. Constance H. Ruth, Technical Support Staff, U.S. EPA Motor Vehicle Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: 313-665-1762, FTS 374-8762. Fax: 313-668-4368, FTS 374-8368.

SUPPLEMENTARY INFORMATION: Section 108(e) of Title I of the Clean Air Act Amendments of 1990 (CAAA) requires that EPA publish an update to the 1978 Transportation-Air Quality Planning Guidelines, and guidance on the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of the National Ambient Air Quality Standards (NAAQS). This document is designed to assist State and local government officials in planning for transportation-related emissions reductions that will contribute to the attainment and maintenance of the NAAQS. It has been prepared in consultation with the Department of Transportation.

This Guidelines document provides an overview of the air quality planning process, the transportation planning process and the ways in which they overlap in light of the CAAA. An overview is also provided of the transportation-related provisions of the CAAA. Considerations in the planning process are addressed. These include: Planning procedures as required by section 174; consideration for inventory and estimates of vehicle miles traveled; considerations for transportation control measures; comformity; funding; and public participation. Examples of how two States are preparing their planning procedures are also included.

Dated: August 27, 1991.

Jerry Kurtzweg,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91-21142 Filed 9-3-91; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3992-8]

Hazardous Waste; Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, Hydrogeologic, and their subcontractors, DPRA, Inc., ICF, Inc., SAIC, Inc., and Woodward Clyde Consultants, information which has been, or will be submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA). These firms will assist The Office of Solid Waste in developing state-of-the-art computer models that will be used to support the development and implementation of regulations governing the management of solid and hazardous wastes. Some of the information may have a claim of business confidentiality.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than September 11, 1991.

ADDRESSES: Comments should be sent to Margaret Lee, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Margaret Lee, Document Control Officer, Office of Solid Waste (OS-312) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, (202) 382-3410.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

The U.S. Environmental Protection Agency is developing state-of-the-art computer models that will be used to support the development and implementation of regulations governing the management of solid and hazardous wastes.

Under EPA Contract 68-W0-0029, Hydrogeologic and their subcontractors will assist the Characterization and Assessment Division of the Office of Solid Waste in developing state-of-the-art computer models that will be used to support the development and implementation of regulations governing the management of solid and hazardous waste. The contractor will be accessing information contained in the Industry Studies Database (ISDB) and the Petroleum Refinery Database (PRDB). The information was collected primarily from industrial facilities under the authority of the Resource Conservation and Recovery Act (RCRA), section 3007, through questionnaire surveys,

contractor sampling and analysis, and site visit reports. The information being transferred to Hydrogeologic and their subcontractors, may have been or may be claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that Hydrogeologic and their subcontractors require access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, Hydrogeologic and their subcontractors will return all such materials to EPA.

Hydrogeologic, and their subcontractors, have been authorized to have access after they have adhered to the security requirements detailed in the "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual." EPA will approve the security plans of the contractors and will inspect their facilities, and approve them, prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: August 22, 1991.

Richard Guimond,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 91-21134 Filed 9-3-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-300224; FRL-3081-5]

Policy Statement Concerning Abandoned and Incomplete Pesticide Petitions for Tolerances or Food or Feed Additive Petitions; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of policy.

SUMMARY: EPA is proposing to deny all pesticide petitions for tolerances and food or feed additive petitions (FAP's) currently pending with the Agency where the petitioner has not responded within 75 days after notification of Agency concerns about lack of adequate data to complete scientific review of the petition.

DATES: Written comments, identified by the document control number [OPP-300224], must be received on or before November 18, 1991.

ADDRESSES: By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

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." 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 Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in rm. 1128, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Donald R. Stubbs, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-7700.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

EPA is responsible for processing tolerance petitions for residues of pesticides in or on raw agricultural commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) and petitions for food additive regulations for residues of pesticides in or on processed food or feed under section 409 of the FFDCA. Section 408 of FFDCA allows the Agency to set a tolerance or an exemption from the requirement of a tolerance for residues of a pesticide chemical in or on a raw agricultural commodity. Under section 408(d), the Administrator may establish a tolerance or an exemption from the requirement of a tolerance upon the request of a person who has submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Under FFDCA section 408(e), the Administrator on his own initiative or upon the request of an interested person may establish a tolerance or an exemption from the requirement of a tolerance. Under section 408(j), the Administrator may establish a temporary tolerance or a temporary exemption from the requirement of a tolerance upon the request of a person who has submitted an application for an experimental use permit for a pesticide chemical under FIFRA. Under FFDCA section 409(c), the Administrator may establish a food additive regulation for pesticide residues in or on food or feed upon the request of any person.

Over the last 20 years, EPA has accumulated a tremendous inventory of pending petitions for pesticide tolerances, exemptions from the requirement of a tolerance, and food additive regulations (hereafter referred to collectively as "pesticide petitions"). The Agency had pending at the end of 1989 approximately 1,000 pesticide petitions. Approximately 450 of these pesticide petitions were submitted to the Agency prior to 1985, of which 103 were submitted during the 1970's.

EPA has treated a pesticide petition as pending until such time as the Agency establishes the requested tolerance or the petition is withdrawn by the petitioner. Many pesticide petitions are found to be deficient in data needed to determine the safety of the expected residues of the pesticide in or on food commodities. In such cases, the petitioner is expected either to withdraw the petition from Agency review or to amend or supplement the petition with sufficient data to allow a complete scientific review of the potential health effects to determine whether a tolerance or food additive regulation can be established. Over time, however, many such petitions that have been found to be deficient in the data necessary to make a health determination have been neither withdrawn nor amended to correct the deficiencies.

The Agency currently has approximately 250 actively (under Agency review) pending petitions. EPA has completed its review of the remaining 750 pesticide petitions and notified the petitioners that these petitions lack sufficient data to establish a tolerance, exemption from the requirement of a tolerance, or a food additive regulation.

Petitioners have failed to respond within the last 4 years to 386 of these 750 pesticide petitions. These petitions

present EPA with three problems: first, the accumulation of unnecessary files and their tracking requirements; second, the tracking and determination of fees associated with tolerance petitions; and third, the avoidance of appropriate payment of fees by some submitters of tolerance petitions.

Prior to 1986, the Agency charged a fee for submission of a pesticide petition under section 408 of FFDCA and an additional fee whenever the petition was amended. These fees were considered earned upon notice to the petitioner that deficiencies existed in the submission, establishment of the tolerance, or withdrawal by the petitioner. On January 8, 1986 (51 FR 844), the Agency changed its fee requirements for pesticide petitions and the fee amounts. As before, a fee was required upon submission of a pesticide petition, but the fee for amending a petition was eliminated. In addition, the monies were no longer considered completely (100 percent) earned upon notification to the petitioner of deficiences, but became wholly or partially earned, depending on the Agency action taken. Therefore, the Agency now tracks fees submitted for pesticide petitions over the life of the petition.

The Agency earns either 80 percent or 100 percent of the fee for its initial review of a pesticide petition, depending on the completeness of the petition. If the petition is acceptable and a tolerance is established, the Agency earns 100 percent of the fee. If the petition is found to be incomplete and additional data are necessary, the Agency earns 80 percent of the fee at that time. The remaining 20 percent of the fee is not earned until the petition is either found complete and a tolerance is established or the petition is withdrawn by the petitioner.

These changes in fees and fee requirements have created a strong disincentive to withdrawing a pesticide petition which is deficient in the data necessary for the establishment of a tolerance. Not only are the current fees substantially higher but a deficient petition can be amended without charge. The result is that submitters of older petitions can avoid paying the appropriate fees for the review of these petitions. For example, a pesticide petition submitted in 1980 cost the petitioner $10,000. If the petition had been found incomplete and was amended prior to 1986 the fee would have been $3,000. If the same petition were amended today, it would not cost the petitioner any additional money. However, a new pesticide petition submitted today would cost the petitioner $52,000. In addition, the fees associated with new pesticide petitions are increased each year, based on the annual percentage changes in Federal salaries. Therefore, persons who submitted deficient pesticide petitions prior to the Agency's restructuring of fees in 1986 will not be paying their equitable share for scientific review if they correct the deficiency in the petition today.

The Agency therefore intends to deny all petitions which have been pending with the Agency for 5 years or longer and for which the petitioner has not responded to the Agency within the past 4 years concerning the lack of adequate data to complete scientific review of the petition. The Agency has chosen this timeframe based on the length of time needed to carry out some of the long-term toxicity studies (up to 3 years) required to support pesticide tolerance petitions. The Agency will start reviewing on an annual basis all pending petitions and will deny those petitions which have been pending with the Agency 5 years or longer and for which no data submission has been made within 4 years from the date of the last notification of the deficiency by the Agency.

In addition, the Agency will start requiring petitioners to respond to Agency notifications of petition deficiencies within 75 days of receipt of the Agency notification. The petitioner may withdraw its petition or set forth timetables for submission of missing information and/or data; a timetable may not exceed a 4-year timeframe. A petition for which there is no response within 75 days will be denied. A petition for which the data have not been submitted within the 4-year timeframe will be denied. Petition denials are orders under section 408(d)(3) or (e) for tolerance or exemption petitions and under section 409(c) for feed/food additive regulations. If a petitioner decides at a later date to pursue the tolerances, it will have to submit a new petition and appropriate fees in accordance with 40 CFR 180.33.

B. Legal Authority

Under FFDCA section 409(c)(1)(B), the Administrator may deny a food additive petition by order and notify the petitioner of such order and the reason for such action. Under section 408(b), the Administrator may establish a tolerance for use of any pesticide chemical in or on any raw agricultural commodity at zero level if the scientific data before the Administrator do not justify the establishment of a greater tolerance. The Agency has been given the explicit authority to deny food additive petitions submitted under section 409 of the FFDCA. Under section 408 of FFDCA, the authority to deny pesticide petitions has not been explicitly expressed; rather, authority to set a tolerance at zero has been established.

The Agency believes that since it has been given authority to establish tolerances, including zero tolerances, under section 408 of FFDCA, it has the authority to deny petitions that lack adequate scientific data with which to make a determination of safety to the public health. A tolerance denial is equivalent, for practical purposes, to setting a zero tolerance; and from a legal standpoint, there is no difference. A crop containing any pesticide residue for which there is no tolerance is regarded under the FFDCA as adulterated. The Agency believes denial of the associated registration request and pesticide tolerance petition is a better way to prevent pesticide misuse than establishing zero tolerances. Both EPA and USDA, which previously administered the FFDCA, have abandoned the use of zero tolerances. Appropriate penalties for the misuse of pesticides are available under FIFRA. In addition, residues in or on the commodity for which no tolerances existed would make the commodity subject to seizure and destruction. Use of the zero tolerance concept would only result in the Agency establishing unnecessary tolerances and cluttering the tolerance regulations under 40 CFR part 180.

II. Development of Regulatory Policy for Petitions with Insufficient Data to Make a Scientific Determination of Safety

A. Denial of Inactive Petitions

The Agency has 386 pesticide petitions which have been pending for 5 years or longer and for which it has been at least 4 years since the petitioner has responded to the Agency's last correspondence. Since the elapsed time has been sufficient for its petitioner to conduct any study which would be required by the Agency to amend its petition, the Agency considers these to be "inactive" petitions that the petitioners are no longer interested in pursuing.

A list of these petitions appears below. The Agency is allowing the petitioners 75 days to withdraw these petitions or to submit a letter outlining the timeframes in which they intend to address the petitions' deficiencies. These timeframes may not exceed a 4-year period. After the 75-day period, the

Agency will deny those petitions for which correspondence is not received.

All other pesticide petitions pending with the Agency but awaiting a response from the petitioner due to a data deficiency will be denied if the deficiency is not addressed within 4 years unless the petitioner submits a timetable for submitting data deficiencies prior to the 4-year date.

Pesticide Petitions For Which No Correspondence Has Been Received

Petition	Chemical	Petitioner	Date	Crop
8F0719	Hexachlorophene	Nationwide Chem. Corp.	05/68	--
1F1050	Mancozeb	Rohm & Haas Co.	--	--
1F1074	Dichlobenil	Thompson-Hayward	02/71	Fish
1F1083	PCNB	Olin Chemicals	--	Beans et al.
1F1102	2,4,5-T	National Ag.	06/71	Food crops et al.
1F1105	Endothall	Pennwalt Corp.	04/71	Sugar beets
1F1118	Toxaphene	Hercules, Inc.	06/71	Alfalfa et al.
1F1129	--	Bio Labs.	--	Cottonseed
2G1241	Methomyl	E.I. du Pont	06/72	Pineapple et al.
2F1292	Azinphos-methyl	Chemagro Chem. Co.	12/72	Corn et al.
3F1417	Dacthal	Diamond Shamrock	09/73	RACs
4E1519	Metaldehyde	IR-4	--	Strawberries
5F1527	Carbofuran	FMC Corp.	09/74	Sweet potatoes
5F1545	Thiofanox	Diamond Shamrock Co.	10/74	Cottonseed et al.
5E1550	Formetanate HCL	IR-4	--	Fresh hops
5F1554	Oxadiazon	Rhodia, Inc.	--	Soybeans et al.
5F1591	Paraquat	Chevron Chem. Co.	03/75	Alfalfa et al.
5F1610	Carbofuran	FMC Corp.	11/75	Potatoes
5F1625	Paraquat	Chevron Chem. Co.	--	Corn grain et al.
5F1639	Paraquat	Chevron Chem. Co.	07/75	Forage grasses et al.
5F1641	Cyhexatin	Dow Chemical Co.	--	Grapes et al.
5F1647	Glyoxime	Ciba-Geigy Corp.	--	Oranges
6E1656	Polybutene	Atl. & Pac. Res., Inc.	07/75	Vegetables
6F1680	Acephate	Chevron Chemical	--	Cantaloupes et al.
6F1693	Fenamiphos	Mobay Chem. Co.	11/75	Potatoes et al.
6E1700	Oxytetracycline	IR-4	10/75	Peaches
6F1702	Fensulfothion	Mobay Chem. Co.	12/75	Beans et al.
6F1716	Asulam	Rhodia, Inc.	--	Alfalfa forage et al.
6F1717	Asulam	Rhodia, Inc.	--	Grasses et al.
6F1726	Propargite	Uniroyal Chem.	02/76	Apples et al.
6F1766	Asulam	Rhodia, Inc.	--	Flaxseed et al.
6E1768	Azinphos methyl	IR-4	--	Carrots
6F1770	Fenamiphos	Mobay Chem. Co.	05/76	Carrots
6F1773	Diflubenzuron	Thompson-Hayward	05/76	Eggs et al.
6F1774	Propargite	Uniroyal Chemical	05/76	Sugarbeet roots et al.
6F1784	Propargite	Uniroyal Chemical	07/76	Alfalfa et al.
6F1795	Captafol	Chevron Chem. Co.	--	Pecans nutmeats
6F1810	Benomyl	E. I. du Pont	--	Lettuce
6F1814	Propargite	Uniroyal Chemical	08/76	Almonds
6G1838	Butachlor	Monsanto Co.	--	Rice et al.
6E1855	Oxydemeton-methyl	IR-4	--	Mustard seeds et al.
7F1884	Acephate	Chevron Chem. Co.	12/76	Cabbage
7F1890	Cycloheximide	Upjohn Co.	12/76	Cherry
7F1895	Disulfoton	Mobay Chemical Corp.	--	Alfalfa
7F1910	Paraquat	Chevron Chem. Co.	04/77	Dry beans
7F1941	Ethirimol	ICI United States, Inc.	05/77	Melons
7F1951	Methiocarb	Mobay Chem. Co.	06/77	Artichokes et al.
7E1982	Captan	IR-4	--	Taro leaves
7F1988	Methiocarb	Mobay Chem. Co.	07/77	Apples et al.
7G1994	Thiofanox	Diamond Shamrock	08/77	Potatoes
7F1997	Dinitramine	U.S. Borax Research Co.	08/77	Guar beans
7E2007	Benomyl	IR-4	--	Eggplant et al.
7F2011	Copper ethylene diamine	Sandoz, Inc.	09/77	Fish et al.
8F2043	Aldoxycarb	Union Carbide	01/78	Cottonseed
8E2047	Captafol	Chevron Chem. Co.	--	Coffee beans
8F2077	Oxadiazon	Rhodia, Inc.	04/78	Almonds et al.
8F2089	Phenthioate	Montedison USA, Inc.	06/78	Oranges et al.
8F2095	Butachlor	Monsanto Co.	--	Rice et al.
8F2096	Aldicarb	Union Carbide Corp.	06/78	Tomatoes
8G2104	Oxythioquinox	Mobay Chemical Co.	--	Almonds et al.
8F2117	Oxamyl	E.I. du Pont	09/78	Field corn
8F2122	Glyphosate	Monsanto	08/79	Sugarcane et al.
9F2156	Alachlor	Monsanto	11/78	Carrabe
9F2186	Aldoxycarb	Union Carbide	04/79	Peanuts et al.
9F2187	Carboxin	Uniroyal Chemical	--	Peanut seed
9F2198	Fluchloralin	BASF Wyandotte Corp.	04/79	Peanuts et al.
9G2204	Vinclozolin	BASF Wyandotte Corp.	--	Peaches et al.
9F2222	Paraquat	Chevron Chem. Co.	07/79	Wheat et al.
9G2227	1-12-(2,4-D) CGA64251	Ciba-Geigy Corp.	--	Apples et al.
9F2231	Methomyl	E.I. du Pont	--	Peanut forage et al.
9F2232	Cyanazine	Shell Chem. Co.	08/79	Soybeans
9F2236	Prodiamine	U.S. Borax Research Corp.	07/79	Soybeans et al.
9G2240	Hercon Checkmate	Herculite Products	--	Peach trees

Pesticide Petitions For Which No Correspondence Has Been Received—Continued

Petition	Chemical	Petitioner	Date	Crop
9E2268	DCNA	IR-4	09/79	Kiwi fruit
9E2269	OPP	IR-4	--	Kiwi fruit
0E2276	Methomyl	IR-4	--	Forage grasses et al.
0F2277	Chlorpropham	Union Carbide	--	Apples et al.
0F2282	TPTH	Thompson-Hayward	--	Soybean seeds et al.
0F2296	Sulprofos	Mobay Chemical Corp.	01/80	Tomatoes
0G2299	Permethrin	Burroughs Welcome, Inc.	12/79	Lean red meat et al.
0G2306	Permethrin	ICI Americas, Inc.	12/79	Alfalfa et al.
0F2307	Permethrin	ICI Americas, Inc.	02/80	Potatoes
0F2308	Permethrin	ICI Americas, Inc.	03/82	Alfalfa hay et al.
0F2313	Alachlor	Monsanto	01/80	Peanuts
0G2314	Cyanazine	Shell Chemical Co.	01/80	Peanuts
0F2316	Oxamyl	E.I. du Pont	02/83	Beans
0F2317	Etridiazole	Olin Chemicals	02/82	Field corn
0G2318	Aldicarb	Union Carbide	01/80	Grapes
0F2327	Oxydemetonmethyl	Mobay Chem. Corp.	04/80	Pecans
0F2334	Vernolate	Stauffer Chem. Co.	04/80	Alfalfa
0G2335	Alachlor	Monsanto Chemical Co.	03/80	Sorghum forage et al.
0E2336	Oxythioquinox	Mobay Chemical Co.	05/80	Grapes
0F2340	TPTH	Thompson-Hayward	04/80	Rice seed
0G2342	Ethephon	GAF Corp.	01/81	Cotton seeds
0F2348	Alachlor	Monsanto Chem. Co.	05/80	Corn fodder et al.
0F2350	Chlorthiophos	EM Laboratories	05/80	Grapes et al.
0F2353	Triforine	EM Laboratories	06/80	Almonds et al.
0F2354	Disulfoton	Mobay Chemical Corp.	05/80	Whole apples
0F2355	Dobay	Domaine, Inc.	05/80	Baled hay
0F2362	Methiocarb	Mobay Chem. Co.	09/80	Corn forage
0F2379	Oxydemetonmethyl	Mobay Chemical Corp.	06/80	Dry beans
0E2391	Phorate	American Cyanamid Co.	07/80	Grn. coffee beans et al.
0G2392	Dichloropropene	Dow Chemical Co.	07/80	Citrus fruit et al.
0E2393	Triadimefon	Mobay Chemical Co.	07/80	Cucumbers et al.
0F2405	Chlorothalonil	Diamond Shamrock	09/80	Oranges
0E2409	Benomyl	IR-4	09/80	Beet roots
0F2416	Metolachlor	Ciba-Geigy	11/80	Sunflowers
0E2419	DCNA	IR-4	09/80	Tomatoes
0E2427	Captan	Ministry of Ag., NZ	09/80	Kiwi fruit
1F2436	Bromopropylate	Ciba-Geigy Corp.	03/81	Citrus fruit et al.
1E2445	Propachlor	IR-4	11/80	Onions
1F2460	Triallate	Monsanto	03/81	Sunflower seed et al.
1G2471	Chlorothalonil	Diamond Shamrock	02/81	Almonds
1F2477	Terbacil	E.I. du Pont & Co.	02/81	Grass crops
1E2486	Linuron	IR-4	03/81	Lettuce
1G2489	Fenvalerate	Shell Chemical Co.	03/81	Sorghum grain
1G2494	Terbufos	Pennwalt Corp.	03/81	Cottonseed
1F2504	Nitrofen	Rohm & Haas Co.	04/81	Broccoli et al.
1F2507	Diflubenzuron	Thompson-Hayward	06/81	Oranges et al.
1G2548	Acifluorfen	Rohm & Haas Co.	08/81	Soybeans
1F2551	Alachlor	Monsanto	08/81	Potatoes
1F2553	Bendiocarb	BFC Chemicals	10/81	Corn
1F2557	Citronella oil	Webb Wright Corp.	10/80	Growing crops
1G2558	Bendiocarb	BFC Chemicals	08/81	Range grass
1F2567	Pendimethalin	American Cyanamid	09/81	Beans et al.
2F2582	Hexachlorophene	Kalo Agr., Inc.	10/81	Peanuts
2E2594	Thiabendazole	Merck & Co., Inc.	10/81	Avocado et al.
2F2597	Aldicarb	Union Carbide	11/81	Grapes
2F2603	Thiabendazole	Merck Sharp & Dohme	01/82	Wheat grain
2F2607	DCNA	Upjohn	01/82	Peanuts
2F2608	Counter	American Cyanamid	01/82	Soybean grain
2G2610	DCNA	Upjohn Co.	06/82	Tomatoes
2G2613	Pyroxfur	Dow Chemical Co.	01/81	Beans
2G2614	Mancozeb	Rohm & Haas Co.	05/82	Soybeans et al.
2G2617	Mancozeb	Rohm & Haas Co.	12/81	Rough rice
2F2624	Permethrin	ICI Americas	02/82	Corn grain
2F2627	Hydrazone	American Cyanamid	02/82	Agricultural crops
2F2628	Pendimethalin	American Cyanamid	01/82	Corn et al.
2G2633	Carbosulfan	FMC Corp.	--	Corn et al.
2E2649	Fenvalerate	IR-4	02/82	Trefoil
2E2652	Oxydemetonmethyl	IR-4	02/82	Peaches
2F2657	Fenvalerate	Shell Chemical Co.	03/82	Raisins et al.
2G2660	Chlorothalonil	Diamond Shamrock	03/82	Apples
2G2662	Thiophanate	Pennwalt Corp.	03/82	Rice et al.
2F2672	Paraquat	Chevron Chemical	04/82	Soybeans
2G2674	Chlorochloline	Mandops, Inc.	06/82	Grain et al.
2F2677	Metribuzin	Mobay Chem. Co.	06/82	Soybeans
2F2679	Aldicarb	Union Carbide	06/82	Field grain
2G2686	Glyphosate	Monsanto	05/82	Soybean grain
2F2688	Triadimefon	Mobay Chemical Corp.	05/82	Pineapples et al
2F2689	Permethrin	FMC Corp.	08/82	Sunflowers et al.
2E2691	Fenamiphos	Mobay Chemical Co.	09/83	Cocoa beans et al.
2E2692	Dimethyl-formamide	Rohm & Haas Co.	05/82	Cottonseed et al.

Pesticide Petitions For Which No Correspondence Has Been Received—Continued

Petition	Chemical	Petitioner	Date	Crop
2G2697	Tridiphane	Dow Chemical Co.	06/82	Corn grain
2F2700	Etridiazole	Olin Chemical Corp.	06/82	Peanuts
2F2704	Triadimefon	Mobay Chemical Corp.	06/82	Seed grass cleanings
2F2705	Amitraz	Upjohn Chem. Co.	06/82	Pears
2G2708	Carbofuran	FMC Corp.	06/82	Green alfalfa
2E2714	Methomyl	IR-4	06/82	Sugarcane
2F2716	Fonofos	Stauffer Chemical Co.	06/82	Potatoes
3F2718	Carbosulfan	FMC Corp.	03/83	Peppermint hay et al.
2G2726	Acetochlor	Monsanto	07/82	Corn
2F2733	Nitrapyrin	Dow Chemical	07/82	Soybeans
2E2735	Simazine	IR-4	07/82	Rhubarb
2F2737	Dimethipin	Uniroyal Chem. Co.	09/82	Potatoes
2G2740	Amitraz	BFC Chemicals	08/82	Apples
2G2745	Fomesafen	ICI Americas	08/82	Soybean
2F2746	Pydrin	Shell Chemical Co.	08/82	Peanut forage
2F2749	Permethrin	ICI Americas	11/82	Sunflower seed
2G2750	Amitraz	Upjohn Chemical Co.	09/82	Apples
2F2751	Cyhexatin	Dow Chemical	11/82	Cottonseed
2G2755	Metolachlor	Ciba Geigy	09/82	Peanuts
2E2757	Nitrapyrin	IR-4	09/82	Potatoes
2F2763	Nitrapyrin	Dow Chemical	09/82	Lettuce
3F2767	Carbosulfan	FMC Corp.	12/82	Citrus fruit
3F2768	Phosalone	Rhone Poulenc	11/82	Almonds
3F2771	Cyhexatin	Dow Chemical	12/82	Cherries
3F2772	Atrazine	Ciba-Geigy	10/82	Sugarcane
3F2785	Carbosulfan	FMC Corp.	02/83	Green alfalfa
3F2788	Pendimethalin	American Cyanamid	11/82	Wheat grain et al.
3G2791	Acetochlor	Monsanto	11/82	Grain sorghum
3F2792	Pendimethalin	American Cyanamid	11/82	Shelled peas et al.
3F2794	Dicamba	Velsicol Chem. Co.	01/83	Cottonseed
3G2797	Acetochlor	Monsanto	11/82	Eggs et al.
3F2803	Methomyl	E. I. du Pont	12/82	Rice grain
3F2806	Flucythrinate	American Cyanamid	02/83	Apples
3F2809	Glyphosate	Monsanto Chem. Co.	03/83	Wheat
3E2812	Acephate	IR-4	12/82	Melons
3E2813	Acephate	IR-4	12/82	Green onions
3F2815	Chlorothalonil	Diamond Shamrock	01/82	Peaches
3G2820	San371-F	Sandoz, Inc.	01/83	Potatoes
3F2822	Methomyl	E.I. du Pont	03/80	Caneberries
3F2823	I01TPTH	American Hoechst Corp.	01/83	Soybeans
3F2832	Alachlor	Monsanto Chem. Co.	02/83	Soybean hay
3E2836	Nuarimol	Elanco	02/83	Bananas
3F2839	Pronamide	Rohm & Haas Co.	04/83	Safflower
3F2843	Methomyl	E.I. du Pont	04/83	Pineapple et al.
3F2844	Pendimethalin	American Cyanamid	04/83	Safflower seed
3E2850	Ethoprop	IR-4	03/83	Tomatoes et al.
3E2852	Ethoprop	IR-4	03/83	Broccoli et al.
3E2866	Benomyl	IR-4	04/83	Endives
3E2867	Acephate	Chevron Chem. Co.	04/83	Grapes
3F2870	Atrazine	Ciba-Geigy	04/83	Range grass hay
3F2872	Chlorpyrifos	Dow Chemical	06/83	Grapes
3F2875	Chlorothalonil	Diamond Shamrock	04/83	Almonds et al.
3E2876	2,4-D	IR-4	04/83	Aquatic sites
3E2881	MCPB	IR-4	04/83	Mint hay
3F2884	Chlorpyrifos	Dow Chemical	06/83	Alfalfa et al
3F2888	Mancozeb	Rohm & Haas Co.	05/83	Soybeans
3F2894	Aldoxycarb	Union Carbide	07/84	Cantaloupe et al.
3F2896	Pirimiphos methyl	ICI Americas, Inc.	05/83	Peanuts
3F2898	Captan	Chevron Chemical Co.	05/83	Almonds et al.
3F2899	Diuron	E.I. du Pont	05/83	Nectarines
3F2900	Terbacil	E.I. du Pont	05/83	Nectarines
3G2902	Amitraz	BFC Chemicals, Inc.	05/83	Grapes
3G2906	Haloxyfop-methyl	Dow Chemical	06/83	Cattle et al.
3F2916	Metolachlor	Ciba-Geigy Corp.	06/83	Seed vegetable et al.
3F2917	Isofenphos	Mobay Chemical Corp.	06/83	Broccoli et al.
3E2920	Linuron	IR-4	06/83	Taro et al.
3F2926	Terbufos	American Cyanamid Co.	07/83	Range Grasses
3G2927	Triadimenol	Gustafson, Inc.	07/83	Wheat et al.
3E2928	Oxamyl	IR-4	07/83	Grapes
3E2931	Ethoprop	IR-4	07/83	Pumpkin, squash
3E2933	Methamidophos	IR-4	07/83	Chinese cabbage
3F2935	Nitrapyrin	Dow	09/83	Cereal grains et al.
3F2936	Cypermethrin	FMC Corp.	08/83	Soybeans
3G2944	Fenarimol	Elanco Chemical Co.	08/83	Pecans
3E2945	Oxydemetonmethyl	IR-4	08/83	Papaya
3F2947	Chlorpyrifos	Dow Chemical	09/83	Wheat et al.
3F2949	Maneb	Rohm & Haas Co.	11/83	Apples et al.
3F2951	Metolachlor	Ciba-Geigy Corp.	08/83	Sorghum forage et al.
3G2961	Glyphosate	Monsanto	09/83	Corn fodder et al.
3F2962	Propargite	Uniroyal Chemical	12/83	Pecans

Pesticide Petitions For Which No Correspondence Has Been Received—Continued

Petition	Chemical	Petitioner	Date	Crop
3F2963	--	BASF Wyandotte	10/83	Corn et al.
3F2966	Acetochlor	Monsanto	11/83	Corn et al.
4F2970	Oxamyl	E.I. du Pont	10/83	Lettuce et al.
4F2980	Chlorothalonil	SDS Biotech Corp.	10/83	Dry beans
4F2981	Permethrin	FMC Corp.	01/84	Sunflower seeds
4E2982	2,4-DB	IR-4	10/83	Oats et al.
4F2984	Sorprophor	Rhone Poulenc, Inc.	10/83	Cotton
4F2985	Permethrin	ICI Americas	01/84	Tomatoes
4F2992	Oxamyl	E.I. du Pont	11/83	Cabbage
4F2996	Terbufos	American Cyanamid	11/83	Peanut shells et al.
4F3000	Metolachlor	Ciba Geigy Corp.	11/83	Apples
4F3002	Fenvalerate	SDS Biotech, Inc.	11/83	Poultry meat
4F3003	Fenvalerate	Shell Chem. Co.	01/84	Milk fat et al.
4F3004	Fenvalerate	Shell Chemical Co.	12/83	Grass et al.
4F3005	Napropamide	Stauffer Chem. Co.	01/84	Alfalfa et al.
4F3008	Chlorpyrifos	Dow Chemical	02/84	Tomatoes
4F3009	Carbosulfan	FMC Corp.	03/84	Apples et al.
4F3010	Cypermethrin	FMC Corp.	02/84	Field corn et al.
4F3011	Cypermethrin	FMC Corp.	02/84	Cabbage
4F3012	Cypermethrin	FMC Corp.	02/84	Sweet corn et al.
4F3013	Thiodicarb	Union Carbide	02/84	Tomatoes
4G3014	Thiodicarb	Union Carbide Co.	12/83	Tomatoes
4G3015	Lactofen	PPG Ind., Inc.	12/83	Peanuts et al.
4F3018	Permethrin	ICI Americas	10/84	Leafy vegetables
4F3021	Fenvalerate	Shell Chemical Co.	01/84	Barley grain et al.
4F3022	Fenvalerate	Shell Chemical Co.	--	Citrus fruits et al.
4F3025	Chlorothalonil	SDS Biotech, Inc.	01/84	Apples
4F3030	Fenvalerate	Shell Chem. Co.	02/84	Brussels sprouts
4G3031	Metalaxyl	Ciba Geigy Corp.	01/84	Grapes
4E3032	Oxydemetonmethyl	IR-4	01/84	Collards et al.
4E3033	Oxydemetonmethyl	IR-4	01/84	Bok choy
4F3041	Dicamba	Velsicol Chem. Co.	--	Corn et al.
4F3042	Pendimethalin	American Cyanamid	03/84	Tomatoes
4E3044	Methomyl	IR-4	02/84	Cranberries
4F3046	Cyfluthrin	Mobay Chemical Corp.	02/84	Cattle products etc.
4F3050	Thiodicarb	Union Carbide	12/83	Corn et al.
4F3052	Carbosulfan	FMC Corp.	04/84	Corn grain et al.
4E3056	Etridiazole	IR-4	02/84	Peppers
4E3058	Thiophanate methyl	IR-4	02/84	Cabbage et al.
4E3059	Etridiazole	IR-4	02/84	Cabbage et al.
4G3061	Dicamba	Velsicol Chemical Co.	03/84	Soybeans et al.
4F3062	Chlorpyrifos	Dow Chemical	05/84	Stone fruits
4G3063	Acephate	Chevron Chemical Co.	03/84	Sorghum grain
4F3068	Methamidophos	Chevron Chemical Co.	03/84	Safflower seed
4F3071	Aldoxycarb	Union carbide	05/84	Sweet potatoes et al.
4E3076	Carbofuran	IR-4	04/84	Raspberries
4E3078	Fenvalerate	IR-4	04/84	Asparagus
4E3079	Folpet	Chevron Chemical Co.	04/84	Kiwifruit
4E3080	Captafol	Chevron Chemical Co.	04/84	Kiwifruit
4F3082	Fluazifop-butyl	ICI Americas, Inc.	05/84	Sugar beets
4E3084	Ethoprop	IR-4	05/84	Lettuce
4E3087	Acephate	IR-4	05/84	Squash
4E3091	Acephate	IR-4	05/84	Blueberries
4F3095	Ethalfluralin	Elanco Products	07/84	Beans et al.
4F3097	Pronamide	Rohm & Haas Co.	05/84	Grass forage et al.
4F3101	Acephate	Chevron Chem. Co.	06/84	Lettuce
4E3104	Fenvalerate	IR-4	05/84	Beet roots
4G3105	Acephate	Chevron Chemical Co.	06/84	Guava
4E3106	Acephate	IR-4	06/84	Sugarcane
4G3107	Fenpropathrin	Chevron Chemical Co.	06/84	Cottonseed
4F3120	Fenvalerate	Shell Chem. Co.	08/84	Sugar beets
4F3122	Norflurazon	Zoecon	10/84	Alfalfa et al.
4F3132	Chlorpyrifos	Dow Chemical Co.	08/84	Lettuce
4E3140	Simazine	IR-4	08/84	Pistachios
4F3147	Fluazifop-butyl	ICI Americas	11/84	Peanuts et al.
5F3158	Thiobencarb	Chevron Chem. Co.	11/84	Endive et al.
5F3162	Carbofuran	FMC Corp.	12/84	Sorghum grain
5F3163	Carbosulfan	FMC Corp.	12/84	Alfalfa
5E3175	Fenbutation oxide	IR-4	11/84	Avocado
5G3176	Cyromazine	Ciba Geigy Corp.	11/84	Mushrooms
5E3178	Fenamiphos	IR-4	11/84	Cucurbits
5F3184	Ether emulsifier	Mobay Chemical Co.	11/84	Ether emulsifiers
5F3187	Aldoxycarb	Union Carbide Co.	12/84	Beans et al.
5F3192	Bromoxynil	Rhone Poulenc, Inc.	12/84	Sweet corn
5H5088	Paraquat	Chevron Chem. Co.	06/85	Corn feed et al.
5H5105	Acephate	Chevron Chem. Co.	11/75	Tomato pomace
6H5109	Fenamiphos	Mobay Chem. Co.	11/75	Tomato pulp et al.
6H5114	Propargite	Uniroyal Chemical	02/76	Apples
6H5120	Paraquat	Chevron Chem. Co.	03/76	Molasses
6H5129	Propargite	Uniroyal Chemical	05/76	Sugarbeet pulp

Pesticide Petitions For Which No Correspondence Has Been Received—Continued

Petition	Chemical	Petitioner	Date	Crop
5H5132	Carbofuran	FMC Corp.	11/75	Peanut soapstock
6H5134	Carbofuran	FMC Corp.	05/76	Raisin waste et al.
6H5143	Butachlor	Monsanto Co.	--	Rice bran et al.
7H5161	Formetanate hydrochloride	IR-4	--	Dry hops et al.
7H5162	Methamidophos	IR-4	--	Celery flakes
8H5178	Aldoxycarb	Union Carbide	01/78	Cottonseed
8H5183	Methiocarb	Mobay Chem. Co.	--	Apples et al.
8H5188	Alachlor	Monsanto	--	Rice bran et al.
9H5196	Glyphosate	Monsanto Chem. Co.	08/79	Molasses
9H5217	Actellic	ICI Americas	04/79	Rice bran et al.
9H5220	TBTF	Environmental Chem., Inc.	04/79	Water
9H5228	Triazole	Ciba-Geigy	03/80	Prunes
0H5242	TPTH	Thompson-Hayward	--	Soybean
0H5243	Oxycarboxin	Uniroyal Chemical	10/79	Coffee
0H5245	Sulprofos	Mobay Chemical Co.	01/80	Corn oil et al.
0H5250	Ethephon	Union Carbide	01/80	Cottonseed
0H5258	Chlorthiophos	EM Laboratories	05/80	Grape pomace et al.
0H5261	Propoxur	Hercules Prdts., Inc.	05/80	Food handling estab.
0H5264	Methiocarb	Mobay Chem. Co.	09/80	Corn
0H5265	Allethrins	McLaughlin Gormley King	10/80	Food processing area
0H5272	Chlorothalonil	Diamond Shamrock	09/80	Citrus oil
1H5279	Bromopropylate	Ciba-Geigy Corp.	03/81	Citrus pulp et al.
1H5281	Tridemorph	BASF Wyandotte	01/80	Dried tea
1H5294	Metolachlor	Ciba-Geigy	11/80	Sunflower meal et al.
1H5297	Carbofuran	FMC Corp.	--	Soybean
1H5298	Phenthioate	Montedison U.S.A.	06/81	Citrus pulp
1H5301	Diflubenzuron	Thompson-Hayward	06/81	Citrus pulp et al.
1H5320	Methomyl	E.I. du Pont	08/81	Tea
2H5327	Aldicarb	Union Carbide	11/81	Grapes
2H5329	Mancozeb	Rohm & Haas	12/81	Milled rice et al.
2H5333	Mancozeb	Rohm & Haas	12/81	Soybean meal et al.
2H5335	Permethrin	ICI Americas	02/82	Corn oil et al.
2H5340	Fenvalerate	Shell Chem. Co.	04/82	Grape pomace
2H5345	Paraquat	Ortho Chevron	04/82	Soybean hulls
2H5346	Benzeneacetate	Shell Chemical Co.	04/82	Sunflower hulls et al.
2H5347	Aldicarb	Union Carbide	03/82	Tomato pomace
2H5353	Amitraz	BFC Chemicals	--	Citrus pulp
2H5356	Fluridone	Eli Lilly & Co.	06/82	Potable water
2H5359	Fonofos	Stauffer Chemical Co.	06/82	Potato peel
2H5362	Cypermethrin	ICI Americas	07/82	Food
2H5365	Nitrapyrin	Dow Chemical Co.	--	Soybean meal
2H5366	Amitraz	BFC Chemicals	08/82	Dried apple pomace
2H5368	Bendiocarb	BFC Chemicals	--	Corn oil
3H5370	Carbosulfan	FMC Corp.	12/82	Citrus dried pulp et al.
3H5371	Atrazine	Ciba-Geigy	10/82	Sugarcane
2H5376	Amitraz	Ciba-Geigy	09/82	Citrus molasses et al.
3H5380	Acephate	Chevron Chem. Co.	11/82	Potato waste
3H5381	Flucythrinate	American Cyanamid	02/83	Apple pomace
3H5384	TPTH	American Hoechst Co.	01/83	Soybeans et al.
3H5386	Cypermethrin	FMC Corp.	--	Dry tomato pomace
3H5388	Carboxin	Uniroyal Chem. Co.	01/83	Peanut meal
3H5390	Malathion	American Cyanamid	12/82	Tea leaves
3H5393	Chlorpyrifos	Dow Chemical	06/83	Raisins et al.
3H5395	Nitrapyrin	IR-4	04/83	Potatoes
3H5398	Pirimiphos methyl	ICI Americas	05/83	Peanuts et al.
3H5400	Captan	Chevron Chemical Co.	05/83	Raisins
3H5403	Haloxyfop-methyl	Dow Chemical Co.	06/83	Cottonseed methyl
3H5406	Cypermethrin	FMC Corp.	08/83	Soybeans
3H5407	Oxythioquinox	Mobay Chem. Co.	08/83	Grape pomace et al.
3H5411	Chlorpyrifos	Dow Chemical	09/83	Wheat
3H5414	Propargite	Uniroyal Chemical	12/83	Pecans
4H5420	Carbosulfan	FMC Corp.	03/84	Dry apple pomace
4H5421	Thiodicarb	Union Carbide	02/84	Tomato paste
4H5423	Fenvalerate	Shell Chemical Co.	01/84	Wheat milled products
4H5427	Cyfluthrin	Mobay Chem. Co.	02/84	Cottonseed et al.
4H5430	Dimethipin	Union Carbide	04/84	Sunflower seed hulls
4H5432	Fluazifop-butyl	ICI Americas	05/84	Sugar beets et al.
4H5433	Triadimefon	Mobay Chemical Co.	03/84	Refined sugar et al.
4H5438	Oxamyl	IR-4	05/84	Raisins et al.
4H5441	Chlorpyrifos	Insecta Pain, Inc.	--	Crude oil et al.
4H5442	Fluazifop-butyl	ICI Americas	11/84	Peanut meal et al.
4H5453	Norflurazon	Zoecon Corp.	12/84	Alfalfa

B. Future Action on Incomplete Petitions

Beginning October 1, 1991, all letters sent to petitioners pointing out administrative or data deficiencies for their petitions will require a response from the petitioner within 75 days. The petitioner may withdraw its petition or set forth timetables for submission of missing information and/or data. A petition for which there is no response within 75 days will be denied. A 4-year

period will be allowed for submission of all data. At the end of the 4-year period, petitions for which all the data have not been submitted will be denied.

III. Undeliverable Mail

The Agency will be trying to contact petitioners based on their current addresses in the Agency's company name and address file. Petitions for those companies that have not kept the Agency apprised of their current name and address of record, and for which the mail is returned as undeliverable, will be denied, unless petitioners respond within the 75 days provided in this Notice.

IV. Format of Submissions

A. Request to Withdraw a Pesticide Petition.

All requests to withdraw a pesticide petition should be submitted on company letterhead and specify the pesticide petition number which the Agency assigned to the petition, the active ingredient of the chemical, and raw agricultural commodities and food or feed items involved.

B. Requests to Retain Petitions

All requests to retain a pesticide petition should be submitted on company letterhead and specify the pesticide petition number which the Agency assigned to the petition, the active ingredient of the chemical, and raw agricultural commodities and food or feed items involved. The request must contain a timetable listing all data deficiencies pointed out in Agency letters and the date the company expects to submit these data. This timeframe may not exceed a 4-year period.

C. Where to Send Requests

All requests should be submitted to the following address: Front End Processing Staff, Registration Division (H7504C), 401 M St., SW., Washington DC 20460.

Dated: August 21, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-20996; Filed 9-3-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-100094; FRL-3938-3]

Sobotka Company, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is 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). Sobotka & Company Inc. has been awarded a contract to perform work for the EPA Office of Pesticide Programs, 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 Sobotka & Company Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(h)(2). This transfer will enable Sobotka & Company Inc. to fulfill the obligations of the contract and serves to notify affected persons.

DATES: Sobotka & Company Inc. will be given access to this information no sooner than September 9, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, 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, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-W9-0077, work order No. 88, Sobotka & Company Inc. will provide technical support to EPA for a Regulatory Impact Analysis for Container Design and Residue Removal Regulations. In providing such technical support, Sobotka & Company Inc. will require information about container types used by various FIFRA registered products. This contract involves no subcontractor.

The Office of Pesticide Programs has determined that access by Sobotka & Company Inc. to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Sobotka & Company Inc. prohibits use of the information for any purpose other than purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; 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, Sobotka & Company Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to Sobotka & Company Inc. by EPA for use in connection with this contract will be returned to EPA when Sobotka & Company Inc. has completed its work.

Dated: August 19, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-21140 Filed 9-3-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180851; FRL 3941-7]

Receipt of Application for Emergency Exemption to use Sethoxydim; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Michigan Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide sethoxydim (CAS 74051-80-2) to control volunteer cereals on up to 20,000 acres of canola in Michigan. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before September 19, 1991.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180851," should be submitted by mail to: Public Response and Program Resources 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. 1128, Crystal Mall #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." 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 Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7889).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of the herbicide, sethoxydim, available as Poast Herbicide (EPA Reg. No. 7969–58) from BASF Corporation, to control volunteer cereals on up to 20,000 acres of canola in Michigan. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, the best rotation for canola in Michigan is following a small grain crop such as wheat, oats or barley, since these crops are harvested in July and canola must be planted in late August. However, there is always the potential for small grain seed to shatter during the harvesting operation. Although timely tillage following small grain harvest may reduce risk of volunteer cereals in canola, the effectiveness of this approach is highly dependent on weather and is therefore inconsistent. According to the Applicant, there are no registered herbicides for postemergent control of volunteer cereals in canola. There is significant risk that small grain competition will be present in as many as 10,000 to 12,000 acres of canola in the August 1991 planting. The potential economic loss is $454,000.

A single ground or aerial application of sethoxydim will be applied at a maximum rate of 1.5 pints of product per acre. Ground applications will be made using five to twenty gallons of spray solution per acre. Aerial applications will be made using five gallons (10 gallons if grass foliage is dense) of spray solution per acre. Approximately 3,750 gallons of product (5,737 pounds of active ingredient) may be needed to treat a maximum of 20,000 acres. Applications will be completed by November 30, 1991.

This notice does not constitute a decision by EPA on the application itself. This is the fourth year the use of sethoxydim on canola has been requested under section 18 of FIFRA, and an application for registration of this use and/or a petition for tolerance for residues of sethoxydim in or on canola has not been submitted to the Agency. Therefore, in accordance with 40 CFR 166.24(a)6, the Agency is required to publish notice of receipt in the **Federal Register** and solicit public comment on this application for a specific exemption for use of sethoxydim on canola.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Michigan Department of Agriculture.

Dated: August 21, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–21139 Filed 9–3–91; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66154; FRL–3943–7]

2-Ethyl-1, 3-Hexanediol; Receipt of Requests to Cancel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to cancel.

SUMMARY: This Notice announces receipt of Union Carbide Corporation's, S.C. Johnson's, d-Con's, and LJB Laboratories' requests for cancellation of their products containing 2-ethyl-1, 3-hexanediol. These four companies hold all U.S. registrations for products with 2-ethyl-1, 3-hexanediol. Notice is given of the intent of EPA to approve the proposed cancellations and not to permit the distribution, sale, or use of existing stocks of 2-ethyl-1, 3-hexanediol products. EPA is at this time soliciting comments on the proposed cancellations.

DATES: Written comments must be submitted on or before October 4, 1991. The Agency intends to approve the proposed cancellations on October 4, 1991.

ADDRESSES: Send three copies of your written comments identified by the docket control number OPP–66154, to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Brigid Lowery, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Reregistration Branch, Crystal Station 1, WF33G6, 2805 Jefferson Davis Highway, Alexandria, VA, (703) 308–8053.

SUPPLEMENTARY INFORMATION: 2-Ethyl-1, 3-hexanediol is currently registered as an insect repellent for use on human skin, clothing, and window and door screens, excluding use in commercial food preparation and serving areas. On July 31, 1991, Union Carbide Corporation submitted, under the authority of section 6(a)(2) of FIFRA, preliminary data which indicated possible adverse developmental effects associated with the use of 2-ethyl-1, 3-hexanediol. The Agency has conducted a preliminary risk assessment of margins of exposure (MOE) based upon the data submitted and has determined that the use of 2-ethyl-1, 3-hexanediol as a repellent by pregnant women represents an unacceptable developmental risk.

The Agency has received requests from all registrants to cancel their 2-ethyl-1, 3-hexanediol registrations. These products are listed in the following Table 1, in ascending order by their EPA Registration Numbers.

Table 1.—2-Ethyl-1, 3-Hexanediol Registrations which the Agency has Received Requests for Voluntary Cancellation

Registration Number	Product Name
3282–49	6-12 Plus Insect Repellent Stick
3282–50	6-12 Plus Insect Repellent Liquid
4822–164	Off Insect Repellent IV
4822–191	6100 Formula 2 Fly and Mosquito Repellent Gel

Table 1.—2-Ethyl-1, 3-Hexanediol Registrations which the Agency has Received Requests for Voluntary Cancellation—Continued

Registration Number	Product Name
4822-203	Johnson Wax 6017 Formula 10 Insect Repellent
10352-34	2-Ethyl-1, 3-hexanediol
41878-1	BF-100 Blackfly Repellent Solution

Under section 6(f)(1) of FIFRA, registrants may request at any time that EPA cancel any of their pesticide registrations. EPA will publish in the **Federal Register** a notice of such request and allow a 30–day period in which the public may comment. Because of the potential health concerns associated with the use of these pesticides, EPA intends to grant the requests for voluntary cancellation of products containing 2-ethyl-1, 3-hexanediol effective October 4, 1991. As a result there will no longer be any products containing 2-ethyl-1, 3-hexanediol registered for pesticidal uses.

In light of the information provided to the Agency by Union Carbide Corporation, EPA cannot conclude that sale or use or existing stocks of the products containing 2-ethyl-1, 3-hexanediol listed in Table 1 would not result in unreasonable adverse effects on the environment or would be consistent with the purposes of FIFRA. Accordingly, the Agency will not permit the distribution, sale, or use of existing stocks of the products containing 2-ethyl-1, 3-hexanediol as listed in Table 1 effective October 4, 1991. EPA will reconsider the prohibition on the distribution, sale, or use of existing stocks of products contained in Table 1 if any person requests reconsideration on or before November 4, 1991. In order for the Agency to reconsider, the person submitting the request must specify why he or she believes that continued use of canceled products containing 2-ethyl-1, 3-hexanediol would not result in unreasonable adverse effects on the environment and would be consistent with the purposes of FIFRA, and must include the factual bases for such belief. Requests for reconsideration should be sent to: Richard Mountfort, PM 10, Office of Pesticide Programs (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

The existing stock prohibition is effective October 4, 1991 unless and until the Agency issues an amendment to such Order.

EPA is now soliciting comments on the proposed cancellations. Interested persons are invited to submit their written comments to the address given above.

Dated: August 23, 1991.

Anne E. Lindsay,

Director, Registration Division.

[FR Doc. 91–20750 Filed 9–3–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS–59914; FRL 3944–4]

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 3 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 91–204, September 8, 1991.
Y 91–205, September 9, 1991.
Y 91–206, September 12, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. E–545, 401 M St., 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 TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 91–204

Importer. Confidential.
Chemical. (G) Polyester.
Use/Import. (G) Paint. Import range: Confidential.

Y 91–205

Importer. Confidential.
Chemical. (G) Polyester.
Use/Import. (G) Paint. Import range: Confidential.

Y 91–206

Manufacturer. Pratt & Lambert.
Chemical. (G) Amine capped polyether polyurethane.
Use/Production. (S) Water-based laminating adhesive. Prod. range: Confidential.

Dated: August 28, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–21141 Filed 9–3–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Tampa Port Authority et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200405–001.

Title: Tampa Port Authority/Tampa Bay International Terminals, Inc. Terminal Agreement.

Parties: Tampa Port Authority, Tampa Bay International Terminals, Inc.

Synopsis: The proposed amendment, filed August 21, 1991, would extend the effectiveness of the Agreement for an additional period of one year.

Agreement No.: 224–200558.

Title: Port of Seattle/Trans Pacific Container Service Corporation Agreement.

Parties: Port of Seattle, Trans Pacific Container Service Corporation.

Synopsis: The Agreement, filed August 21, 1991, provides for Trans

Pacific Container Service Corporation to lease, on a month-to-month basis, approximately 31,347 square feet of black-topped land area, approximately 44,768 square feet of warehouse space, and ships berth of not less than 340 lineal feet and pier's apron of approximately 60 feet in width—20,400 square feet.

Dated: August 28, 1991.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 91-21048 Filed 9-3-91; 8:45]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Central Illinois Financial Corporation; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 23, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Central Illinois Financial Corporation, Champaign, Illinois; to acquire Heartland Federal Savings and Loan Association, Mattoon, Illinois, and thereby engage in operating a savings association pursuant to § 225.25(b)(9); and Hearthstone Mortgage Company, Inc., Mattoon, Illinois, a wholly owned subsidiary of Heartland Federal Savings and Loan Association, and thereby engage in real property appraising pursuant to § 225.25(b)(13) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Union Planters Corporation, Memphis, Tennessee; to acquire Fidelity Federal Bank, a Federal Savings Bank, Nashville, Tennessee, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y. This activity will be conducted out of the thrift's offices in Nashville, Goodlettsville, Brentwood, Dickson, Gallatin, Lebanon, Mt. Juliet, Oak Ridge, Knoxville, Murfreesboro, Jackson, Humboldt, Madison and Antioch, Tennessee.

Board of Governors of the Federal Reserve System, August 27, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-20955 Filed 9-3-91; 8:45 am]

BILLING CODE 6210-01-F

Citizens Holding Company, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 25, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Citizens Holding Company, Inc., Talladega, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank of Talladega, Talladega, Alabama, a *de novo* bank.

2. Hardwick Holding Company, Dalton, Georgia; to merge with Peoples Bartow Corporation, Cartersville, Georgia, and thereby indirectly acquire Peoples Bank of Bartow County, Cartersville, Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Belleville Bancshares Corporation, Belleville, Wisconsin; to become a bank holding company by acquiring 83.81 percent of the voting shares of Belleville State Bank, Belleville, Wisconsin.

2. Tri County Bancorp, Inc., Brown City, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Tri-County Bank, Brown City, Michigan.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Holmes Corporation, Lexington, Mississippi; to acquire an additional 1.67 percent of the voting shares of Citizens Financial Corporation, Belzoni, Mississippi, for a total of 5.83 percent, and thereby indirectly acquire Citizens Bank & Trust Company, Belzoni, Mississippi.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Lowry Facilities, Inc., Clinton, Oklahoma; to acquire an additional 0.93 percent of the voting shares of Oklahoma Bancorporation, Inc., Clinton, Oklahoma, for a total of 37 percent, and thereby indirectly acquire Oklahoma Bank and Trust Company, Clinton, Oklahoma, and Custer County State Bank, Arapaho, Oklahoma.

Board of Governors of the Federal Reserve System, August 28, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–21085 Filed 9–3–91; 8:45 am]

BILLING CODE 6210–01–F

Gene A. Salmon, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 25, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Gene A. Salmon; to acquire an additional 34.9 percent of the voting shares of Central Illinois Financial Corporation, Champaign, Illinois, for a total of 34.93 percent, and thereby indirectly acquire The Champaign National Bank, Champaign, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. K. Patrick Kruchten; to acquire 25 percent of the voting shares of Staples Financial Services, Inc., Staples, Minnesota, and thereby indirectly acquire Staples State Bank, Staples, Minnesota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Gary Lewis Acker, Flower Mound, Texas; to acquire 91.7 percent of the voting shares of Harrah National Bancshares, Inc., Harrah, Oklahoma, and thereby indirectly acquire The National Bank of Harrah, Harrah, Oklahoma.

2. William Slocum, Franklin, Nebraska; as trustee for the Perry L. Slocum Trust and Mabel Slocum Trust to acquire an additional 25.6 percent of the voting shares of Franklin State Bancshares, Inc., Franklin, Nebraska, and thereby indirectly acquire Franklin State Bank, Franklin, Nebraska.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Nasib Gannam, Whittier, California; to acquire 15.74 percent of the voting shares of Greater Pacific Bancshares, Whittier, California, and thereby indirectly acquire Bank of Whittier, National Association, Whittier, California.

Board of Governors of the Federal Reserve System, August 28, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–21086 Filed 9–3–91; 8:45 am]

BILLING CODE 6210–01–F

Standard Bancorporation, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 23, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Standard Bancorporation,, Inc., Lincoln, Nebraska; to become a bank holding company by acquiring Standard State Bank, Independence, Missouri.

Board of Governors of the Federal Reserve System, August 27, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–20956 Filed 9–3–91; 8:45 am]

BILLING CODE 6210–01–F

West One Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of

Governors not later than September 23, 1991.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. West One Bancorp, Boise, Idaho; to acquire West One Interim Federal Savings Bank, Hillsboro, Oregon, upon its formation to be merged with Washington Federal Savings Bank, Hillsboro, Oregon, and thereby engage in owning and operating as savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y under the name of West One Bank, Oregon, F.S.B.; and through Ward Cook, Inc., a nonbank subsidiary of Washington Federal Savings Bank, which will continue to be a nonbank subsidiary of West One Bank, Oregon, F.S.B. following the merger, to thereby engage in making, acquiring or servicing of loans or other extensions of credit for the company's account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y; and following the conversion of West One Bank, Oregon, F.S.B., to a state-chartered savings bank, to thereby operate the converted institution as a bank subsidiary of Applicant under the name of West One Bank, Oregon, S.B.

Board of Governors of the Federal Reserve System, August 26, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-20957 Filed 9-3-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. 9216]

Hoechst Celanese Corporation, et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a German company and its U.S. subsidiaries, for a period of ten years, from entering into any agreement, with any producer of acetal products, to allocate, divide or restrict competition in markets for acetal products. In addition, the consent order would prohibit the respondents from using certain restrictions to limit competition from Daicel Chemical Industries and Polyplastics Company of Japan, their partners in a joint venture.

DATES: Comments must be received on or before November 4, 1991.

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

FOR FURTHER INFORMATION CONTACT: Rhett Krulla, FTC/S-3302, Washington, DC 20580. (202) 326-2608.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Hoechst Celanese Corporation, a corporation, Hoechst Corporation, a corporation, and Hoechst Aktiengesellschaft, a corporation;

Agreement Containing Consent Order to Cease and Desist

The Agreement herein, by and between Respondents Hoechst Aktiengesellschaft, Hoechst Corporation, and Hoechst Celanese Corporation (hereinafter referred to collectively as "Respondents"), by their duly authorized officers and their attorneys, and counsel for the Federal Trade Commission (the "Commission"), is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance therewith, the parties hereby agree that:

1. Respondent Hoechst Aktiengesellschaft ("Hoechst AG") is a company organized and existing under the laws of the Federal Republic of Germany, and has its principal place of business at D-6230 (Main) 80, Frankfurt, Federal Republic of Germany. Hoechst AG is the corporate parent of Respondents Hoechst Corporation and Hoechst Celanese Corporation.

2. Respondent Hoechst Corporation is a wholly-owned subsidary of Hoechst AG, and is the corporate parent of Respondent Hoechst Celanese Corporation. Hoechst Corporation is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at Route 202-206 North, Bridgewater, New Jersey.

3. Respondent Hoechst Celanese Corporation ("Hoechst Celanese") is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at Route 202-206 North, Bridgewater, New Jersey, Hoechst Celanese is a wholly-owned subsidiary of Hoechst Corporation, and was formed through the merger of American Hoechst Corporation and Celanese Corporation ("Celanese") on February 27, 1987.

4. The Commission has issued and served upon Hoechst AG, Hoechst Corporation, and Hoechst Celanese (collectively, "Respondents") a complaint charging them with violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. Respondents have filed an answer to the complaint denying said charges.

5. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

6. Respondents waive:

(a) Any further procedural steps;

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

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

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

7. This Agreement shall not become a part of the public record of this proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify Respondents, in which event it will return the matter to adjudication for further proceedings or take such other action as it may consider appropriate, or issue and serve its decision in accordance with the terms of this Agreement in disposition of the proceeding.

8. This Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the complaint issued by the Commission.

9. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently

withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to Respondents, (1) issue its decision containing the following Order in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service (return receipt requested) of the decision containing the agreed-to Order to Respondents' authorized attorney, James T. Halverson, Esquire, Shearman & Sterling, 153 East 53rd Street, New York, NY 10022, or his designated successor, shall constitute service. Respondents waive any right they may have to any other manner of service. A copy of the decision containing the agreed-to Order shall be sent by first class mail to General Counsel, Law Department, Hoechst Celanese Corporation, P.O. Box 2500, Route 202–206 North, Bridgewater, New Jersey 08876. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or this Agreement may be used to vary or contradict the terms of the Order.

10. Respondents have read the complaint and the Order contemplated hereby. Respondents understand that, once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

As used in this Order, the following definitions shall apply:

(A) *Acetal* means the crystalline engineering thermoplastic polymer resin known as Acetal, polyacetal or polyoxymenthylene (POM), and includes both Acetal homopolymers, manufactured from formaldehyde or methanol and consisting of repeating oxymethylene units with esterified terminal hydroxy groups, and Acetal copolymers, having oxyethylene groups or other monomer groups, including 1-4 butanediolformal, inserted randomly along the polymer chains.

(B) *Acetal products* means Acetal; trioxane; and Acetal to which fillers, reinforcing agents, and other polymers and/or chemical additives have been added where the Acetal is thirty (30) percent or more of the organic polymer content.

(C) *Acetal technology* means patented and unpatented technology and know-how relating to the development, manufacture, sale, or use of Acetal products.

(D) *Acetal Assets and Businesses* include but are not limited to all assets, properties, business and goodwill, tangible and intangible, utilized in the development, production, distribution or sale of Acetal products, including, without limitation, the following:

(1) All machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other tangible personal property;

(2) All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, trademarks, patents, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data;

(3) Raw material and finished product inventories and goods in process;

(4) All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

(5) All right, title and interest in and to the contracts entered into in the ordinary course of business with customers (to the extent assignable) (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

(6) All rights under warranties and guarantees, express or implied;

(7) All separately maintained, as well as relevant portions of not separately maintained, books, records and files; and

(8) All items of prepaid expense.

(E) *Before* means on the date or at any time prior to that date.

(F) *Commercially implemented* means technology that has been practiced commercially in a commercially-scaled facility for the manufacture of Acetal products.

(G) *Control* means "control" as it is defined at 16 C.F.R. § 801.1(b) on the date this Order becomes final.

(H) *Daicel* means Daicel Chemical Industries, Ltd., a corporation organized and existing under the laws of Japan (with its principal place of business at Osaka, Japan), its predecessors, subsidiaries, divisions, groups and affiliates controlled directly or indirectly by Daicel Chemical Industries, Ltd., and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns other than Respondents.

(I) *Daicel VI* means Daicel acting pursuant to Paragraph VI of this Order.

(J) *Daicel/Polyplastics site* means any site in Japan at which Polyplastics manufactures Acetal products and any property owned by Daicel or by Polyplastics proximate to such site or connected to such site via supply or service lines.

(K) *Material confidential information* means competitively sensitive or proprietary information not independently known to Respondents from sources other than the Acquired entity, and includes but is not limited to customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets.

(L) *Polyplastics* means Polyplastics Company, Ltd., a corporation organized and existing under the laws of Japan (with its principal place of business at Osaka, Japan), its predecessors, subsidiaries, divisions, groups and affiliates controlled directly or indirectly by Polyplastics Company, Ltd., and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(M) *Polyplastics/TEPCO Acetal technology* means all Acetal technology that:

(1) Polyplastics, independent of Respondents and Respondents' Acetal technology, has developed or patented, or in the future develops or patents;

(2) Polyplastics has licensed or otherwise obtained, or in the future licenses or otherwise obtains, from any person other than Respondents;

(3) Polyplastics had the right to use under license from Respondents and commercially implemented at its Fuji City, Japan, facility before February 27, 1987; or

(4) has been provided to TEPCO by Respondents or Polyplastics for commercial use in the design and operation of the facilities TEPCO now has under construction in Kaoshing, Taiwan, Republic of China, for the manufacture of Acetal products as of the date that commercial production of Acetal polymers commences at that

facility; and all other such technology provided to TEPCO by Respondents or Polyplastics and put in commercial use within six (6) months after the date that commercial production of Acetal polymer commences at the Kaoshing facility.

(N) *Respondents* means, individually and collectively:

(1) Hoechst Aktiengesellschaft, a corporation organized and existing under the laws of the Federal Republic of Germany (with its principal place of business at Frankfurt, Federal Republic of Germany),

(2) Hoechst Corporation, and Hoechst Celanese Corporation, two corporations organized and existing under the laws of Delaware (with their principal places of business at Bridgewater, New Jersey), their predecessors, subsidiaries, divisions, groups and affiliates controlled directly or indirectly by Hoechst Aktiengesellschaft, Hoechst Corporation, or Hoechst Celanese Corporation, individually or collectively, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns. For purposes of this Order the term "Respondents" excludes Polyplastics and TEPCO.

(O) *Substantial purpose* means fifty (50) percent or more of the anticipated production from the incremental capacity is intended to be used for the stated purpose.

(P) *TEPCO* means Taiwan Engineering Plastics Co., Ltd., a corporation organized and existing under the laws of Taiwan, Republic of China, (with its principal place of business at Taipei, Taiwan), its predecessors, subsidiaries, divisions, groups and affiliates controlled directly or indirectly by Taiwan Engineering Plastics Co., Ltd., and their respective successors and assigns.

(Q) *United States* means the United States, including its territories and possessions.

(R) *Viability and Competitiveness* means capable of operating independently at the same output as currently (at competitive prices) and capable of functioning independently and competitively in the Acetal business.

II

It Is Ordered That, for a period of ten (10) years following the date this Order becomes final, Respondents do forthwith cease and desist from creating, maintaining, adhering to, participating in, or enforcing (including enforcing, after the ten-year period expires, any agreement entered into before the date this Order becomes final with respect to: (i) Conduct within such period; or (ii) conduct after such period by any person who initiated or engaged in similar conduct during such period) any agreement (if any) with any producer of Acetal products to allocate, divide or restrict competition in markets for Acetal products. Provided, however, Respondents, Polyplastics, and TEPCO may, consistent with the terms of this Order, enter into agreements with each other designating any Respondents, Polyplastics, or TEPCO an exclusive or nonexclusive distributor or selling agent for the sale of Acetal products in any part of the world, except that Respondents may not be designated an exclusive distributor or exclusive selling agent, in the United States, of Polyplastics, Daicel, or (to the exclusion of Polyplastics or other third parties) TEPCO. Provided, further, that Respondents retain the right, in their sole discretion, to limit the use of Acetal technology owned by Respondents, except as required by this Order

III

It Is Further Ordered That, for a period of ten (10) years following the date this Order becomes final, Respondents shall forthwith cease and desist from creating, maintaining, adhering to, participating in, or enforcing any agreement (if any) (except for those actions permitted under Paragraph II of this Order) that:

(A) Restricts the right of Daicel VI or Polyplastics to sell, cause to be sold, use, or cause to be used Acetal products in the United States; or restricts the right of Daicel VI or Polyplastics to engage in the development or manufacture of Acetal products in the United States using Polyplastics/TEPCO Acetal technology, except as provided in Paragraph VI of this Order; or restricts the rights of customers of Polyplastics or Daicel to use or resell Acetal products purchased from Polyplastics or Daicel VI. Provided that, to the extent that Polyplastics sells, causes to be sold, uses or causes to be used Acetal products in the United States during such period, Acetal technology, including manufacturing technology for manufacture in Japan, necessary to effect sales or use in the United States shall be perpetually licensed to such entity for use in connection with sales or use of Acetal products thereafter in the United States. Provided, further, that any of the Polyplastics/TEPCO Acetal technology licensed, transferred and used by Daicel or Polyplastics for the construction of a new facility or expansion of an existing facility pursuant to operation of Paragraph VI of this Order shall be perpetually licensed to such entity for use in connection with such new facility or facility expansion, including but not limited to the right to manufacture at such facility and sell Acetal products produced therein in the United States. Provided, however, that Respondents may take action with respect to any shipment or sale of Acetal products in or into the United States by any person to the extent that Respondents believe, in good faith, is reasonably necessary to protect Respondents from direct or indirect liability under any law of the United States, including, but not limited to, the Toxic Substances Control Act.

(B) Designates Respondents the exclusive distributor or exclusive selling agent in the United States or any part thereof of Acetal products manufactured by Daicel VI, Polyplastics, or (to the exclusion of Polyplastics or other third parties) TEPCO.

IV

It Is Further Ordered That Respondents shall take no action against:

(A) Daicel VI or Polyplastics to enforce any patent of Respondents necessary to utilize the Polyplastics/TEPCO Acetal technology with respect to the development, manufacture, use, or sale of Acetal products in the United States; or

(B) Any customer of Polyplastics or Daicel VI to enforce any patent of Respondents necessary to utilize the Polyplastics/TEPCO Acetal technology with respect to purchases of Acetal products in the United States or purchases of Acetal products for sale or use in the United States.

V

It Is Further Ordered That, for a period of ten (10) years following the date this Order becomes final, Respondents shall take no action, directly or indirectly, to restrict, interfere with, or, except through competition by Respondents in the open market, influence in any manner:

(A) the selling price of Acetal products (i) that Polyplastics or Daicel VI manufactures or sells in the United States; or (ii) that Polyplastics or Daicel VI sells for resale in the United States or sells for use in manufacture in the United States to the extent that Respondents know that such products are destined for the United States;

(B) the volume of Acetal products that Polyplastics or Daicel VI manufactures or sells in the United States;

(C) the volume of Acetal products that Polyplastics or Daicel VI manufactures in Japan for sale into the United States

or for use in manufacture in the United States; or

(D) the geographic areas in which Polyplastics sells Acetal products that Polyplastics obtains from TEPCO. Provided, however, Respondents may, consistent with the terms of this Order, enter into a distribution arrangement or selling agency permitted under Paragraph II of this Order and may negotiate price and volume with respect to purchases by Respondents from Polyplastics, TEPCO or Daicel. Provided, further, that Respondents may exercise any of their rights permitted under Paragraph VI of this Order.

VI

It Is Further Ordered That, for a period of ten (10) years following the date this Order becomes final, whenever Daicel submits in writing or by motion a proposal to the Board of Directors of Polyplastics for Polyplastics, using Polyplastics/TEPCO Acetal technology, (1) to construct new facilities or expand existing facilities for the manufacture of Acetal products in the United States; (2) to add production capacity at any then-existing Daicel/Polyplastics site in Japan (or, if necessary space is not available or costs would be substantially higher at then-existing Daicel/Polyplastics sites, at such other sites in Japan as Polyplastics may select), an express, substantial purpose of which is to supply Acetal products for sale or use in the United States; or (3) to construct production capacity at any site in Japan for the sole express purpose of supplying Acetal products for sale or use in the United States:

(A) Respondents shall, within 60 days after receipt of the proposal, either (1) agree in writing to the proposal and agree to make the necessary capital contribution, if any, as specified in the request; or (2) notify Daicel and Polyplastics in writing that Respondents elect not to participate in the proposal;

(B) If Respondents elect not to participate in the proposal pursuant to Paragraph VI.(A)(2) of this Order, Daicel may, at its own sole election, pursue the proposal independently of Polyplastics,

(1) At any site in the United States,

(2) At any then-existing Daicel/Polyplastics site in Japan,

(3) If necessary space is not available or costs would be substantially higher at then-existing Daicel/Polyplastics sites, at such sites in Japan as Daicel may select, provided Daicel agrees to designate Polyplastics an exclusive distributor or selling agent for the sale outside the United States of Acetal products produced at such site, or

(4) If the sole express purpose of the proposal is to supply Acetal products for sale or use in the United States, at such sites in Japan as Daicel may select, through a non-exclusive license by Respondents and Polyplastics (without the right to sublicense except to an entity controlled by Daicel and which entity no other owner controls and no owner other than Daicel is engaged, at the time of the sublicense, in manufacturing industrial organic chemicals, plastics materials or synthetic resins or fibers anywhere in the world which, if manufactured in the United States, would be defined in Standard Industrial Classification (SIC) Codes 286 and 282) of the Polyplastics/TEPCO Acetal technology for the manufacture of Acetal products in the United States or Japan for use in connection with the proposal. If Daicel so elects, it shall notify Respondents and Polyplastics of its intention to pursue the proposal independently at least sixty (60) days prior to proceeding with the proposal. Provided, however, Respondents may limit, in the license, the persons to whom the license may be assigned in the event of a sale of the licensed entity to exclude persons engaged, at the time of the sale, in manufacturing industrial organic chemicals, plastics materials or synthetic resins which, if manufactured in the United States, would be defined in Standard Industrial Classification (SIC) Codes 286 and 282.

(C) Within sixty (60) days of receipt of notice from Daicel that Daicel intends to pursue independently the proposal, Respondents shall, at their sole election, either:

(1) Execute and cause Polyplastics to execute in favor of Daicel a license and authorization to Daicel to use all Polyplastics/TEPCO Acetal technology in connection with the proposal at any then-existing Daicel/Polyplastics site in Japan (or, if necessary space is not available or costs would be substantially higher at existing sites, at such sites in Japan as Daicel may select provided Daicel agrees to designate Polyplastics an exclusive distributor or selling agent for the sale outside the United States of Acetal products produced at such site; or, if the sole express purpose of the proposal is to supply Acetal products for sale or use in the United States, at such sites in Japan as Daicel may select) or at any site in the United States and any subsequent expansion thereof. The royalty to be paid by Daicel for use of the Polyplastics/TEPCO Acetal technology, either in the United States or Japan, shall be commercially reasonable, shall be paid by Daicel only to Polyplastics, and shall be distributed by Polyplastics in accordance with established practice. If Daicel agrees to designate Polyplastics an exclusive distributor or selling agent for the sale outside the United States of Acetal products produced by Daicel pursuant to Paragraph VI.(B)(3) of this Order, Respondents shall, as a shareholder in Polyplastics, cooperate with Daicel in causing Polyplastics to agree to distribute or sell outside the United States, and to take such action as may be necessary to distribute or sell outside the United States, Acetal products produced by Daicel pursuant to Paragraph VI.(B)(3) of this Order on terms and conditions no less favorable than those under which Polyplastics distributes or sells Acetal products produced by Respondents or by TEPCO;

(2) agree in writing to proceed with the original proposal through Polyplastics, in accordance with Paragraph VI.(A)(1) of this Order, agree to support and vote in favor of the proposal, and agree to make the necessary capital contribution, authorize expenditure of the retained earnings of Polyplastics, or authorize financing of the proposal by debt, as specified in the proposal. If Respondents elect to agree to proceed with the original proposal through Polyplastics,

(a) Daicel must pursue the proposal through Polyplastics; and

(b) Respondents must allow Daicel to pursue the proposal through Polyplastics and must support and vote in favor of, and take no action to impede, the proposal and shall, as a shareholder in Polyplastics, cooperate with Daicel in taking such actions and in causing Polyplastics directors to take such action as may be appropriate to have the improvements, construction, or other proposal so funded to be made and done; or

(3) agree in writing to proceed with the proposal through Polyplastics and agree to support and vote in favor of the proposal, provided Daicel contributes all necessary capital funding, without use of the retained earnings of Polyplastics and without imposing on Respondents financial liability for the capital cost of the proposal. If respondents make this election,

(a) Daicel must pursue the proposal through Polyplastics;

(b) Respondents must support and vote in favor of, and take no action to impede, the proposal and shall, as a shareholder in Polyplastics, cooperate with Daicel in taking such actions and in causing Polyplastics directors to take such action as may be appropriate to have the improvements, construction, or other proposal so funded to be made and done; and

(c) Respondents shall negotiate in good faith with Daicel to establish a satisfactory corporate and financial structure that equitably compensates Daicel for its investment, permits Daicel to realize such return on its investment as the project may yield and, to the extent commercially feasible, protects Respondents from loss. Provided, however, that the respective voting interests in Polyplastics of Daicel and Respondents in existence on the date that the Agreement containing this Order is signed by Respondents shall not be altered. Provided further that, notwithstanding any agreement to the contrary, dilution of Respondents' ownership shares in Polyplastics as a result of application of this Paragraph VI. (C)(3) of this Order shall not affect the rights of Polyplastics to use of Acetal technology under any license agreement.

(D) If the Respondents, Polyplastics, and Daicel are unable to agree on (i) the availability of sufficient space for the installation of new capacity for Acetal products at then-existing Daicel/Polyplastics sites or the relative costs of constructing capacity at these sites or other sites in Japan; (ii) the site at which Polyplastics shall construct production capacity in Japan pursuant to Paragraph VI of this Order; (iii) the amount of the royalty or other terms of the technology license pursuant to Paragraph VI.(C)(1) of this Order; (iv) the establishment or operation of an exclusive distribution or sales agency pursuant to Paragraph VI.(C)(1) of this Order; or (v) a corporate and financial structure pursuant to Paragraphs VI.(C)(3) or IX.(E)(2) of this Order, Daicel may elect to cause the issue to be submitted to outside, independent, binding arbitration in the City, County, and State of New York. In the event Daicel so elects, Respondents shall agree to submit to such arbitration, and the issue shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") AAA's Supplementary Procedures for International Commercial Arbitration or any successor rules thereto. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The decision of the arbitrator, after confirmation by the court pursuant to 9 U.S.C. 9, or succeeding statutory provisions, shall be final and binding upon the parties, and the failure of Respondents thereafter to abide by the arbitrator's award shall be a violation of this Order.

VII

It Is Further Ordered That, for a period commencing on the date this Order becomes final and continuing for ten (10) years, Respondents shall not acquire, directly or indirectly, without the prior approval of the Commission, assets, or all or any part of the total outstanding stock or share capital of, or any other interest in, any entity (including, but not limited to Polyplastics) that owns or operates assets engaged in, used for or previously used for (and still suitable for use for) the production of Acetal in any location in the world. Provided, however, these prohibitions shall not relate to the construction of new facilities by or for Respondents or to the acquisition of compounding or recycling facilities. Provided further that such prior approval shall not be required:

(A) If Respondents satisfy the conditions set forth in Paragraphs VIII or IX of this Order;

(B) If, before the acquisition, Respondents already control such entity and already own a sufficient proportion of the voting shares of such entity and have sufficient representation on the board of directors of such entity so that no other owner of such entity, and no group of owners other than Respondents, can veto or block any action Respondents may direct such entity to take;

(C) If Respondents acquire two (2) percent or less of any class of the outstanding stock or share capital of any entity, provided Respondents' total ownership of such entity, including the stock or share capital to be acquired, does not exceed two (2) percent of any class of the outstanding stock or share capital of the entity;

(D) If Respondents acquire solely for the purpose of investment five (5) percent or less of any class of the outstanding stock or share capital of any entity provided Respondents' total ownership of such entity, including the stock or share capital to be acquired, does not exceed five (5) percent of any class of the outstanding stock or share capital of the entity; or

(E) If Respondents acquire outstanding shares of Polyplastics provided the voting rights now exercised respectively by Respondents and by Daicel with respect to Polyplastics do not change from the rights existing on the date the Agreement containing this Order is signed by Respondents and provided the total of the shares of Polyplastics owned by Respondents including the shares to be acquired does not exceed fifty (50) percent of the total outstanding shares of Polyplastics.

VIII

It Is Further Ordered That (A) If, in the absence of an acquisition agreement with an entity that neither owns nor operates nor has any interest in assets engaged in, used for, or previously used for (and still suitable for use for) the production of Acetal in any location in the world (hereinafter "Acquired entity"), Respondents announce their intention to aquire or commence an acquisition of, any interest in the Acquired entity and, before Respondents obtain sufficient control of the Acquired entity to prevent an acquisition by the Acquired entity, such Acquired entity acquires stock or share capital of, or any other interest in, any third entity that has an interest in assets engaged in, used for or previously used for (and still suitable for use for) the production of Acetal (hereinafter "Third entity"), Respondents may, in lieu of obtaining prior approval of such acquisition under Paragraph VII of this Order, comply with and satisfy each of the requirements of this Paragraph VIII of this Order.

(B) If, in the absence of an acquisition agreement with an entity that neither owns not operates nor has any interest in assets engaged in, used for, or previously used for (and still suitable for use for) the production of Acetal in any location in the world (hereinafter "Acquired entity"), Respondents announce their intention to acquire or commence an acquisition of, any interest in the Acquired entity and, before Respondents obtain sufficient control of the Acquired entity to prevent an acquisition by the Acquired entity, such Acquired entity acquires assets (hereinafter "Third entity assets") that include any assets used in the production of Acetal, Respondents may, in lieu of obtaining prior approval of such acquisition under Paragraph VII of this Order, comply with and satisfy each of the requirements of this Paragraph VIII of this Order;

(C) If Respondents acquire fifty-one (51) percent or more of the total outstanding stock or share capital of any entity, other than Daicel, Polyplastics or TEPCO, that owns or operates assets engaged in, used for, or previously used for (and still suitable for use for) the production of Acetal in any location in the world (hereinafter "Acquired entity"), Respondents may, in lieu of obtaining prior approval of such acquisition under Paragraph VII of this Order, comply with and satisfy each of the requirements of this Paragraph VIII of this Order.

(D) In order to make an acquisition under Paragraphs VIII.(A), VIII.(B), or VIII.(C) of this Order without obtaining the Commission's prior approval pursuant to Paragraph VII, Respondents shall comply with and fulfill each of the following requirements:

(1) Respondents shall notify the Commission

(a) At least thirty (30) days prior to making an acquisition under Paragraph VIII.(C); and

(b) As soon as practicable, and in any event, within three (3) days of Respondents learning of the acquisition by the Acquired entity of any interest in a Third entity or of Third entity assets, as described in Paragraphs VIII.(A) or VIII.(B) of this Order.

Respondents shall file such notification with the Secretary of the Commission and shall file a copy thereof with the Assistant Director for Compliance, Bureau of Competition. Such notification shall follow the format for filings under section 7A of the Clayton Act, 15 U.S.C. 18a, and the Commission's Premerger Reporting Rules promulgated thereunder, 16 CFR 801, et seq., and, in addition, shall include a verified written report setting forth in detail the manner and form in which Respondents intend to comply with the provisions of this Paragraph VIII of this Order with respect to such acquisition. Such notification shall be in addition to any reporting, waiting period, and other requirements applicable to the transaction under section 7A of the Clayton Act, 15 U.S.C. 18A and the Commission's Premerger Reporting Rules promulgated thereunder, 16 CFR parts 801, 802, 803.

(2) For all acquisitions under Paragraph VIII.(A) of this Order, as soon as Respondents have sufficient control over the Acquired entity to do so, Respondents shall place all stock and share capital of the Third entity in a non-voting trust until said stock or share capital is divested. For all acquisitions under Paragraphs VIII.(B) or VIII.(C) of this Order, Respondents shall comply with all terms of Paragraph VIII.(H) of this Order. Respondents' obligations under Paragraph VIII.(H) of this Order shall take effect as soon as Respondents have sufficient control over the Acquired entity to satisfy the terms of Paragraph VIII.(H) and shall continue in effect until such time as Respondents have divested all the Properties to Be Divested, as specified respectively in Paragraphs VIII.(D)(3)(a), VIII.(D)(3)(b), and VIII.(D)(3)(c) of this Order, or until such other time as Paragraph VIII.(H) provides.

(3) Within twelve (12) months after:

(a) The date when Respondents have sufficient control over the Acquired entity, pursuant to Paragraph VIII.(A) of this Order, to divest stock or share capital of the Third entity, Respondents shall divest, absolutely and in good faith, all the stock or share capital of the Third entity ("the Properties to Be Divested");

(b) The date when Respondents have sufficient control over the Acquired entity, pursuant to Paragraph VIII.(B) of this Order, to divest assets of the Acquired entity, Respondents shall divest, absolutely and in good faith, all the Acetal Assets and Businesses of the Acquired entity and also divest such additional Third entity assets and effect such arrangements encompassed within the Third entity assets that are necessary to assure, insofar as possible under the Circumstances of divesting the Third entity assets, the Viability and Competitiveness of the Acetal Assets and Businesses of the Acquired entity ("the Properties to Be Divested");

(c) The date of any acquisition under Paragraph VIII.(C) of this Order, Respondents shall divest, absolutely and in good faith, all the Acetal Assets and Businesses of the Acquired entity and also divest such additional assets and businesses of the Acquired entity and effect such arrangements that are necessary to assure the Viability and Competitiveness of the Acetal Assets and Businesses of the Acquired entity ("the Properties to Be Divested").

(4) Respondents shall divest the Properties to Be Divested only to an acquiring entity or entities that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. Respondents shall demonstrate, in their application for approval of a proposed divestiture,

(a) For divestitures to be effected pursuant to Paragraph VIII.(D)(3)(c) of this Order, the Viability and Competitiveness of the Properties to Be Divested; or

(b) For divestitures to be effected pursuant to Paragraphs VIII.(D)(3)(a) or VIII.(D)(3)(b) of this Order, that the proposed divestiture assures, insofar as possible under the circumstances of divesting the Third entity or the Third entity assets, the Viability and Competitiveness of the Properties to Be Divested and that Respondents have done nothing to decrease the Viability and Competitiveness of the Properties to Be Divested relative to the condition in which they existed at the time Respondents acquired control over the Acquired entity. Provided that Respondents have no obligation to go outside the Third entity or the Third entity assets to enhance the Viability and Competitiveness of the Properties to Be Divested.

The purpose of the divestiture is to ensure (insofar as possible, for divestitures to be effected pursuant to Paragraphs VIII.(D)(3)(a) or VIII.(D)(3)(b) of this Order, under the circumstances of divesting the Third entity or the Third entity assets) the continuation of the Properties to Be Divested as ongoing, viable businesses engaged in the development, manufacture and sale of Acetal, and to remedy any lessening of competition resulting from the acquisition.

(5) Within sixty (60) days after the date Respondents file with the Commission the notice required by Paragraph VIII.(D)(1) of this Order and every sixty (60) days thereafter until Respondents either (1) withdraw such notification and abandon the proposed acquisition, or (2) have fully complied with the provisions of Paragraph VIII of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying and have complied with those provisions. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for the divestiture of the Properties to Be Divested, including the identity of all parties contacted. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and reports and recommendations concerning divestiture.

(E) If Respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Properties to Be Divested within the time required by Paragraph VIII.(D)(3) of this Order, Respondents shall consent to the appointment by the Commission of a trustee to divest:

(1) In the case of an acquisition under Paragraphs VIII.(A) or VIII.(B) of this Order, the Properties to Be Divested; and

(2) In the case of an acquisition under Paragraph VIII.(C) of this Order, the stock or other share capital of the Acquired entity.

If, however, prior to the end of the twelve-month period, Respondents have submitted an application for approval of a proposed divestiture, the divestiture period shall be extended until the Commission approves or denies the submitted plan.

(F) In the event the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. section 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

(G) If a trustee is appointed by the Commission or a court pursuant to Paragraphs VIII.(E) or VIII.(F) of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

(1) The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

(2) The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest, as specified in Paragraph VIII.(E) of this Order, the Properties to Be Divested and the stock or other share capital of the Acquired entity and to effect the additional obligations as set out in this Order.

(3) The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission. Provided, however, the Commission may only extend the divestiture period two (2) times.

(4) Respondents shall cause, subject to an appropriate confidentiality agreement, the trustee to have full and complete access to the personnel, books, records and facilities related to the Acquired entity, or any other relevant information, as the trustee may reasonably request. Respondents shall cause to be developed such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

(5) Subject to Respondents' absolute and unconditional obligation to divest at no minimum price, and the purpose of the divestiture as stated in Paragraph VIII.(D)(4) of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the Properties to Be Divested or the stock or other share capital of the Acquired entity, as applicable. The divestiture shall be made in the manner set out in Paragraph VIII.(E) of this Order, provided, however, if the trustee receives bona fide offers from more than one acquiring entity or entities, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among these approved by the Commission.

(6) The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants (all of whom shall be subject to appropriate confidentiality agreements) as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondents and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's completing the divestitures specified in Paragraph VIII.(E) of this Order.

(7) Except in the case of reckless disregard of his or her duties or intentional wrong doing, Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order.

(8) Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of court-appointed trustee, of the court, Respondents shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

(9) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph VIII.(G)(1) of this Order.

(10) The Commission and, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

(11) The trustee shall have no obligation or authority to operate or maintain the Acquired entity.

(12) The trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

(H) From the date Respondents acquire fifty-one (51) percent or more of the stock or other share capital of the Acquired entity pursuant to Paragraph VIII.(C) of this Order, or have sufficient control over the Acquired entity pursuant to Paragraph VIII.(B) of this Order to satisfy the terms of this Paragraph VIII.(H), until the day after the divestiture required by this Paragraph VIII of this Order has been completed, Respondents (meaning for purposes of this Paragraph VIII.(H) of this Order, Respondents excluding the Acquired entity and excluding all personnel connected with the Acquired entity as of the date Respondents acquire the stock or other share capital of the acquired entity) will hold the stock and other share capital of the Acquired entity separate and apart on the following terms and conditions:

(1) The Acquired entity shall be held separate and apart and shall be operated independently of Respondents except to the extent that Respondents must exercise direction and control over the Acquired entity to assure compliance with this Order.

(2) Respondents shall not influence, exercise direction over, or exercise control over, directly or indirectly, the Acquired entity, provided, however, that Respondents may exercise only such direction and control over the Acquired entity as is necessary to assure compliance with this Order.

(3) Respondents shall maintain the Viability and Competitiveness and marketability of the Acquired entity and

shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair its marketability or Viability and Competitiveness. Provided that, for acquisitions pursuant to Paragraph VIII.(B) of this Order, Respondents have no obligation to go outside the Third entity assets to enhance the Viability and Competitiveness of the Third entity assets.

(4) Respondents shall not permit any director, officer, employee, or agent of Respondents to also be a director, officer or employee of the Acquired entity. Respondents may exercise any voting rights associated with the stock and share capital of the Acquired entity only to the extent necessary to assure compliance with this Order.

(5) Except as required by law or as reported by the auditor (provided for in subparagraph VIII.(H)(6) of this Order) and except to the extent that necessary information is exchanged in the course of evaluating the acquisition of the Acquired entity, defending investigations or litigation, obtaining legal advice, acting to assure compliance with this Order (including accomplishing the divestitures) or negotiating agreements to complete the divestitures, Respondents shall not receive or have access to, or the use of, any of the Acquired entity's material confidential information not in the public domain, except as such information would be available to Respondents in the normal course of business if the acquisition of the Acquired entity had not taken place. Any such information that is obtained pursuant to this subparagraph VIII.(H)(5) of this Order shall only be used for the purpose set out in this subparagraph VIII.(H)(5) of this Order.

(6) Respondents may retain an independent auditor to monitor the operation of the Acquired entity. Said auditor may report to Respondents on all aspects of the operation of the Acquired entity other than the Third entity or the Acetal Assets and Businesses of the Acquired entity but shall not disclose to Respondents material confidential information concerning the Acquired entity.

(7) Respondents shall not change the composition of the management of the Acquired entity except that the Acquired entity shall have the power to remove employees for cause.

(8) Any employee of Respondents who obtains or may obtain confidential information under this Paragraph VIII.(H) of this Order shall enter a confidentiality agreement prohibiting disclosure of confidential information until the day after the divestiture required by this Paragraph VIII of this Order has been completed.

(9) All earnings and profits of the Acquired entity shall be retained separately in the Acquired entity.

(10) Should the Federal Trade Commission or the Attorney General seek in any proceeding to compel Respondents to divest themselves of the Acquired entity or to compel either Respondents or the Acquired entity to divest any assets or businesses of the Acquired entity, or to seek any other injunctive or equitable relief, Respondents shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the acquisition of the Acquired entity.

(I) Nothing contained in this Order shall prevent the Commission or the Attorney General from taking any action to prevent any acquisition of the Acquired entity by Respondents, including an action under section 7A of the Clayton Act, 15 U.S.C. 18a, or section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b).

It Is Further Ordered That, notwithstanding the provisions of Paragraph VII of this Order, which require prior approval, Respondents may acquire, without the prior approval of the Commission, stock or share capital of Polyplastics, or any other interest therein, provided each of the following conditions of this Paragraph IX of this Order are satisfied and are complied with by Respondents:

(A) For a period of ten (10) years following the date this Order becomes final, Respondents shall take no action to solicit Daicel to tender or otherwise sell any stock or share capital of Polyplastics or any other interest therein other than those actions necessary for Respondents to preserve their rights under Paragraph IX.(B) of this Order. Provided, however, that this Paragraph IX.(A) of this Order does not apply to an acquisition of Polyplastics shares pursuant to Paragraph VII.(E) of this Order.

(B) The stock or share capital of Polyplastics or other interest therein is tendered to Respondents pursuant to the right of first refusal contained in Paragraph 2.5 of the Main Agreement, dated June 25, 1962 between Daicel and Celanese, which states in pertinent part:

(I)f at any time while both (Daicel and Celanese) are owners of shares of Polyplastics the party so desiring (herein sometimes called "Offeror") will give to the other party (herein sometimes called "Offeree") a first right to purchase in the following manner:

I. The Offeror will give to the Offeree a notice and offer in writing stating

(a) The number of shares of Polyplastics offered for sale to Offeree,

(b) The price per share of the shares so offered and the place and currency of payment, and

(c) That the said offer shall remain open and irrevocable for a period of sixty days.

II. If the said offer is accepted in writing and unconditionally prior to its expiration, Offeree shall have a further period of ninety days to make payment in full for the shares so sold.

III. If the said offer is not accepted Offeror may offer and sell the said shares, subject to the applicable provisions of Japanese law, by public or private sale at any time or from time to time, within a period of twelve months from expiration or earlier refusal of the said offer to any third party or parties, at a price per share not less than the price per share fixed in the notice and offer to Offeree for settlement at the same place and in the same currency as stated in such notice. The parties agree to take all action necessary to permit such public or private sale.

If the Offeror does not sell the shares so offered within such twelve months period, the said shares shall again be subject to a first right of purchase as aforesaid;

(C) For a period of ten (10) years following the date this Order becomes final, the respective voting rights exercised by Respondents and by Daicel with respect to Polyplastics shall not change from the rights existing on the date the Agreement containing this Order is signed by Respondents;

(D) For a period of ten (10) years following the date this Order becomes final, Respondents do not obtain, in total holdings, more than fifty (50) percent of the total outstanding shares of Polyplastics;

(E) During the ten (10) year period following the date this Order becomes final, prior to entering into any agreement with Daicel pursuant to which Respondents would obtain more than fifty (50) percent of the outstanding shares of Polyplastics upon expiration of Paragraphs VII and IX of this Order, Respondents shall satisfy and comply with each of the following conditions:

(1) At least thirty (30) days prior to executing such agreement, Respondents shall deliver written notification to the Commission of the proposed agreement. Respondents shall file such notification with the Secretary of the Commission and shall file a copy thereof with the Assistant Director for Compliance, Bureau of Competition. Such notification

shall follow the format for filings under section 7A of the Clayton Act, 15 U.S.C. 18a, and the Commission's Premerger Reporting Rules promulgated thereunder, 16 CFR part 801, et seq., and, in addition, shall include a verified written report setting forth in detail the manner and form in which Respondents intend to comply with the provisions of this Paragraph IX of this Order with respect to such acquisition. Such notification shall be in addition to any reporting, waiting period, and other requirements applicable to the transaction under section 7A of the Clayton Act, 15 U.S.C. 18a and the Commission's Premerger Reporting Rules promulgated thereunder, 16 CFR parts 801, 802, 803;

(2) Prior to execution of such agreement, Respondents and Daicel shall establish a corporate and financial structure that will assure that Daicel retains, without expiration, equitable ownership of, and realizes the total profit or loss resulting from, any subsequent investment made by Daicel, or any subsequent capital contribution made by Polyplastics or to Polyplastics made by Daicel, pursuant to Paragraph VI of this Order, while preserving Respondents' future ownership rights in the then existing assets and operations of Polyplastics. If Respondents and Daicel are unable to agree on a satisfactory corporate and financial structure, Daicel may elect binding arbitration, in accordance with the provisions of paragraph VI.(D) of this Order, to determine the structure; and

(3) Execution and consummation of such agreement shall have no effect on any rights available to Daicel pursuant to Paragraph VI of this Order, and Daicel shall retain, after execution or consummation of any such agreement, all rights available to it pursuant to Paragraph VI of this Order.

X

It Is Further Ordered That this Order shall not be construed to prohibit Respondents from engaging in any action, conduct, agreement, or other course of dealing, not affecting United States commerce. The meaning of "affecting United States commerce" shall be determined with reference to the judicial interpretation of the phrase "affecting commerce" as set forth in section 7 of the Clayton Act, 15 U.S.C. 18. Provided, however, that nothing in this Paragraph X. of this Order shall affect Respondents' obligations under this Order with respect to any acquisition by Respondents of all or any part of the assets, stock or share capital of, or any other interest in, Polyplastics or Daicel.

XI

It Is Further Ordered That this Order shall not be construed to prohibit Respondents from engaging in any action, conduct, agreement, or other course of dealing under compulsion of a foreign sovereign government or an agency thereof, to the extent such compulsion would immunize those activities from a finding of illegality under the Sherman Act, 15 U.S.C. 1, et seq., provided:

(A) Respondents shall not, directly or indirectly, induce or solicit such compulsion by any foreign sovereign government or any agency thereof; and

(B) Respondents shall notify the Secretary of the Commission within the earlier of:

(1) Fifteen (15) days after any legal counsel of Hoechst Aktiengesellschaft or Hoechst Celanese Corporation becomes aware that any foreign sovereign government or any agency thereof is considering such compulsion; or

(2) Twenty (20) days after any officer or director of Hoechst Celanese Corporation, any member of the Management Board of Hoechst Aktiengesellschaft, or any of Respondent's representatives on the Polyplastics Board of Directors becomes aware that any foreign sovereign government or any agency thereof is considering such compulsion and recognizes that such compulsion might affect the operation of any provision of this Order.

Such notification shall be in the form of a verified written statement and shall include all information concerning such compulsion known to or believed by Respondents, the basis for the information, a statement of the manner in which the information was obtained, and a statement of the effect of the compulsion on the requirements of the Order.

XII

It Is Further Ordered That, within sixty (60) days after the date this Order becomes final, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying and have complied with the provisions of this Order.

XIII

It Is Further Ordered That, one year from the date this Order becomes final and annually for nine years thereafter, Respondents shall file with the Commission a verified written report of their compliance with this Order.

XIV

It Is Further Ordered That, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondents, made to any of their respective principal offices, Respondents shall permit any duly authorized representatives of the Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents, as applicable, relating to any matters contained in this order; and

(B) Upon ten days notice to Respondents, and without restraint or interference from Respondents, to interview officers or employees of Respondents, who may have counsel present, regarding such matters.

XV

It Is Further Ordered That, Respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the Respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation, dissolution or sale of subsidiaries that relate to the manufacture or sale of Acetal, or any other change that may affect compliance obligations arising out of the Order.

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted, for public comment, an agreement to a proposed consent order, from Hoechst Aktiengesellschaft ("Hoechst A.G."), Hoechst Corporation, and Hoechst Celanese Corporation (collectively, "respondents"), which, if finally accepted by the Commission, would settle outstanding charges by the Commission that respondents violated section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in connection with respondents' 1987 acquisition of Celanese Corporation ("Celanese").[1]

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by

[1] A separate consent order was entered by the Commission on July 2, 1987, settling charges that the acquisition substantially lessened competition in the United States polyester staple and polyester filament markets. *American Hoechst Corporation*, 110 F.T.C. 4 (1987).

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

In its administrative complaint, issued November 17, 1988, the Commission charged that the acquisition of Celanese by Hoechst A.G. and its subsidiary American Hoechst Corporation("American Hoechst") eliminates competition between Celanese and Ticona Polymerwerke GMBH ("Ticona"), a foreign joint venture owned by Celanese and Hoechst A.G., in the manufacture and sale of acetal. Acetal is an engineering thermoplastic used in a variety of molded mechanical parts requiring hardness and mechanical strength. The complaint alleges that it is difficult to enter into the manufacture and sale of acetal, that the world acetal market is highly concentrated, and that, in light of these and other structural features of the acetal market, the acquisition is likely to result in a substantial lessening of competition with respect to the manufacture and sale of acetal, in the world, including in the United States.

The order accepted for public comment would not require divestiture of any of respondents' existing acetal assets or businesses, including those acquired through the acquisition of Celanese. Instead, the order is designed to restore, through respondents' remaining joint venture affiliates, competition that was eliminated by the acquisition. Respondents own a 45-percent interest in Polyplastics Company, Ltd. ("Polyplastics"), which manufactures acetal in Japan and sells acetal in Japan and other countries. The remaining stock of Polyplastics is owned by Daicel Chemical Industries, Ltd. ("Daicel"), a Japanese chemical company. In addition, respondents are participants with Polyplastics and The Chang Chun[2] group of Taiwan, in another joint venture company, Taiwan Engineering Plastics Co., Ltd. ("TEPCO"), which is currently constructing an acetal plant in Taiwan using technology licensed by respondents and Polyplastics.

For a period of ten years from the date the order becomes final, the order would prohibit respondents from agreeing with competitors to divide markets and would bar respondents from acting as an exclusive distributor or exclusive selling agent of Polyplastics, Daicel, or TEPCO in the United States. Also, for ten years, the order would prohibit respondents from enforcing license restrictions that prevent Polyplastics from competing against respondents in the manufacture and sale of acetal in the United States. The order would free Polyplastics and Daicel to take advantage of competitive opportunities to export acetal to the United States and to manufacture and sell acetal in the United States. The order would prohibit respondents from using patents to block the manufacture or sale of acetal by Polyplastics or Daicel in the United States pursuant to the rights granted under the order and would bar respondents from rescinding, after the order expires, manufacturing or selling rights exercised by Daicel or Polyplastics during the term of the order.

Further, for ten years, the order would bar respondents from exercising influence or control, as shareholder and director of Polyplastics, regarding the volume or price of acetal that Polyplastics manufactures or sells in the United States including sales by Polyplastics of acetal manufactured by TEPCO. Further, for ten years, the order would provide a procedure by which Daicel could cause Polyplastics to build an acetal plant in the United States and to add production capacity in Japan in support of export sales to the United States, using any of the technology that either is currently being used to build the TEPCO plant or had been put into commercial use by Polyplastics at the time of the Celanese acquisition. If respondents were unwilling to contribute toward the project, Daicel could build the plant on its own.

For ten years, the order would prohibit respondents from increasing their ownership share of Polyplastics, above 50 percent, without the prior approval of the Commission. Notification requirements under the order would enable the Commission to take timely action to block further changes in ownership that would take effect after expiration of the ten-year, prior approval period. Before making any other acquisition affecting United States commerce in the world acetal market, respondents would be required either to obtain the prior approval of the Commission or to commit themselves to hold separate the company to be acquired, free of direction or influence by respondents, until a Commission approved divestiture of all acetal assets and businesses of the acquired company has been completed and, failing such divestiture, to have a Commission-appointed trustee divest all of the stock of the acquired company. The order includes a mechanism that would prevent the order from being abused by a takeover target. If such target attempts to thwart an acquisition by making certain acquisitions, the order would permit respondents to proceed with the acquisition subject to the hold separate and divestiture requirements.

The purpose of the order is to prevent further undue increases in market concentration among acetal producers and to restore competition among respondents and their joint venture affiliates in the manufacture and sale of acetal in the world market. The relief provisions of the order are primarily directed toward eliminating restrictions that directly affect acetal consumers in the United States and prevent respondents' affiliates from manufacturing and selling acetal in the United States.

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

Donald S. Clark,

Secretary.

[FR Doc. 91-21105 Filed 9-3-91; 8:45 am]

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[2] The Chang Chun group consists of Chang Chun Petrochemical Co., Ltd., Chang Chun Plastics Co., Ltd., and Chang-Ren Trading Co. Ltd., three corporations organized and existing under the laws of Taiwan, Republic of China, with their headquarters at Taipei, Taiwan.

[File No. 912 3032]

Volvo North America Corporation, et al. and Scali, McCabe, Sloves, Inc.; Proposed Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the two consent agreements, accepted subject to final Commission approval, would require, among other things, Volvo and its advertising agency, Scali, McCabe, Sloves, Inc., to pay $150,000 each to the U.S. Treasury as disgorgement, and would prohibit respondents from misrepresenting the strength, structural integrity, or crashworthiness of any automobile or auto part, or the safety of a vehicle occupant in a collision.

DATES: Comments must be received on or before November 4, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary,

room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston or Lisa Hellerman, FTC/S–4002, Washington, DC 20580. (202) 326–3153 or 326–3139.

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

In the matter of Volvo North America Corp., a corporation, and Volvo Cars of North America, a division of Volvo North America Corporation.

File No. 912–3032 Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Volvo North America Corporation, a corporation, and Volvo Cars of North America, a division of Volvo North America Corporation, and it now appearing that Volvo North America Corporation and Volvo Cars of North America, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It Is Hereby Agreed by and between Volvo North America Corporation and Volvo Cars of North America, by their duly authorized officers and attorneys, and counsel for the Federal Trade Commission, that:

1. Volvo North America Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 535 Madison Avenue, New York, NY 10002.

Volvo Cars of North America is a division of Volvo North America Corporation, with its headquarters located at Rockleigh Industrial Park, Northvale, New Jersey 07647.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

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

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

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

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

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

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

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

Order

For purposes of this Order:

Automobile shall mean any automobile or light truck, including but not limited to any pick-up truck, sport utility vehicle, recreational vehicle, passenger van, or multi-purpose vehicle.

I

It is ordered That respondents Volvo North America Corporation, a corporation, and Volvo Cars of North America, a division of Volvo North America Corporation, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any automobile or automobile part, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. In connection with any advertisement depicting a demonstration, experiment or test, making any representation, directly or by implication, that any demonstration, picture, experiment or test depicted in the advertisement proves, demonstrates or confirms any material quality, feature or merit of any product, or the superiority or comparability of the advertised product in a material respect relative to any other product, when such demonstration, picture, experiment or test does not prove, demonstrate or confirm the representation for any reason, including but not limited to:

1. The undisclosed use or substitution of a material mock-up or prop;

2. The undisclosed material alteration in a material characteristic of the advertised product, any product to which the advertised product is compared, or any other material prop or device depicted in the advertisement;

3. The use of a visual perspective or camera, film, audio or video technique that, in the context of the advertisement

as a whole, materially misrepresents a material characteristic of the advertised product, any product to which the advertised product is compared, or any other material aspect of the demonstration; or

4. The undisclosed differential treatment, in a material respect, to which the advertised product and the product to which it is compared are subjected.

B. Misrepresenting, directly or by implication, the strength, structural integrity, or crashworthiness of any automobile or automobile part, or the safety of a vehicle occupant in an automobile collision or accident.

II

It is further ordered That within five (5) days of the date of service of this Order, respondents, their successors and assigns, shall pay $150,000.00 to the United States Treasury as disgorgement. Such payment shall be by cashier's check or certified check made payable to the Treasurer of the United Sates. In the event of any default in payment, which default continues for more than ten (10) days beyond the due date of payment, respondents shall also pay interest as computed under 28 U.S.C. Section 1961, which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid.

III

It is further ordered That within fifteen (15) days of the date of service of this Order, respondents shall distribute a copy of this Order to each of their operating divisions engaged in the advertising, offering for sale, sale or distribution of any automobile or automobile part, to each of their officers, and to each of their agents, representatives or employees who perform discretionary functions and are engaged in the preparation or placement of advertising or other materials covered by this Order, and shall secure from each such person a signed statement acknowledging receipt of a copy of the Order.

IV

It is further ordered That respondents, their successors and assigns, for three (3) years after the date of the last dissemination of the representation, shall maintain and, within thirty (30) days of any written request, make available to the Federal Trade Commission for inspection and copying the following records:

A. Any and all videotapes, in complete and unedited form, and any and all still photographs taken during the production of any advertisement depicting a demonstration, experiment, or test.

B. Any and all affidavits or certifications submitted by an employee, agent or representative of respondents to a television network or to any other individual or entity, which affidavit or certification affirms the accuracy or integrity of a demonstration or demonstration techniques contained in an advertisement.

In addition, respondents, their successors and assigns, for three (3) years after the date of service of this Order, shall maintain and, within thirty (30) days of any written request, make available to the Federal Trade Commission for inspection and copying all signed statements obtained pursuant to section III, above.

V

It is further ordered That respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporation or division which may affect compliance obligations arising out of this Order, including but not limited to any change in corporate name or address, dissolution, assignment or sale resulting in the emergence of a successor corporation, and the creation or dissolution of subsidiaries.

VI

It is further ordered That respondents shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Volvo North America Corporation and its automobile division, Volvo Cars of North America ("respondents"). Respondents sell Volvo automobiles in the United States.

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

This matter concerns advertisements for Volvo automobiles which depict a so-called "monster truck" event, in which an oversized pickup truck drives over a row of automobiles. In the advertisements, the "monster truck" is shown crushing all of the cars in the row with the exception of a Volvo station wagon, which remains intact.

The Commission's proposed complaint in this matter alleges that the respondents falsely represented that the monster truck event included unaltered cars which had been subjected to equal treatment, and that the results shown accurately represent the comparative performance of actual, unaltered Volvos and competing cars under the depicted conditions. According to the FTC's charges, these representations were false and misleading because, among other things, certain of the Volvos used in the demonstration were structurally reinforced, certain structural supports in the competing cars were severed, and the Volvos were subject to less severe treatment than the competing cars by the monster truck.

The proposed consent order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future. The proposed order also provides for the disgorgement of $150,000.00 by respondents to the United States Treasury.

Part IA of the proposed order prohibits respondents from misrepresenting that a demonstration, picture, experiment or test depicted in any advertisement for an automobile proves, demonstrates or confirms a material quality, feature or merit of a product or the superiority or comparability of the advertised product relative to any other product. By way of example, the proposed order lists four types of alterations that might result in such a misrepresentation. These include the undisclosed substitution of a material mock-up or prop; the undisclosed material alteration in the depicted products or other material prop or device; the undisclosed use of a visual perspective or camera, film, audio or video technique which misrepresents a material characteristic of the depicted products or another material aspect of the demonstration; and the undisclosed differential treatment of the advertised product and any product to which it is compared.

Part IB of the proposed order prohibits respondents from misrepresenting the strength, structural integrity, or crashworthiness of any automobile or automobile part, or the safety of a vehicle occupant in an automobile collision or accident.

Part II of the proposed order requires respondents to disgorge $150,000.00 to the U.S. Treasury.

The proposed order also requires respondents to distribute copies of the order to certain of their divisions, officers, agents, representatives and employees; to maintain certain materials related to their production of any advertisement depicting a demonstration, experiment or test; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file compliance reports with the Commission.

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

In the matter of Scali, McCabe, Sloves, Inc. a corporation.

File No. 912–3032 Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Scali, McCabe, Sloves, Inc., a corporation, and it now appearing that Scali, McCabe, Sloves, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Scali, McCabe, Sloves, Inc., by its duly authorized officer and attorney, and counsel for the Federal Trade Commission, that:

1. Scali, McCabe, Sloves, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 800 Third Avenue, New York, NY 10022.

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

3. Proposed respondent waives:

a. Any further procedural steps;

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

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

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

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

5. This agreement if for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

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

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

Order

For purposes of this Order:

Automobile shall mean any automobile or light truck, including but not limited to any pick-up truck, sport utility vehicle, recreational vehicle, passenger van, or multi-purpose vehicle.

I

It is Ordered That respondent Scali, McCabe, Sloves, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. In connection with any advertisement depicting a demonstration, experiment or test, making any representation, directly or by implication, that any demonstration, picture, experiment or test depicted in the advertisement proves, demonstrates or confirms any material quality, feature or merit of any product, or the superiority or comparability of the advertised product in a material respect relative to any other product, when such demonstration, picture, experiment for any reason, including but not limited to:

1. The undisclosed use or substitution of a material mock-up or prop;

2. The undisclosed material alteration in a material characteristic of the advertised product, any product to which the advertised product is compared, or any other material prop or device depicted in the advertisement;

3. The undisclosed use of a visual perspective or camera, film, audio or video technique that, in the context of the advertisement as a whole, materially misrepresents a material characteristic of the advertised product, any product to which the advertised product is compared, or any other material aspect of the demonstration; or

4. The undisclosed differential treatment, in a material respect, to which the advertised product and the product to which it is compared are subjected.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know that the demonstration, experiment or test did not provide, demonstrate or confirm the representation.

B. Misrepresenting, directly or by implication, the strength, structural integrity, or crashworthiness of any automobile part, or the safety of a

vehicle occupant in an automobile collision or accident.

II

It is further ordered That within five (5) days of the date of service of this Order, respondent, its successors and assigns, shall pay $150,000.00 to the United States Treasury as disgorgement. Such payment shall be by cashier's check or certified check made payable to the Treasurer of the United States. In the event of any default in payment, which default continues for more than ten (10) days beyond the due date of payment, respondent shall also pay interest as computed under 28 U.S.C. section 1961, which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid.

III

It is further ordered That within fifteen (15) days of service of this Order, respondent shall distribute a copy of this Order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representatives or employees who are engaged in managerial or creative functions in the preparation or placement of advertising or other materials covered by this Order, and shall secure from each such person a signed statement acknowledging receipt of a copy of the Order.

IV

It is further ordered That respondent, its successors and assigns, for three (3) years after the date of the last dissemination of the representation, shall maintain and make available to the Federal Trade Commission for inspection and copying the following records:

A. Any and all videotapes, in complete and unedited form, and any and all still photographs taken during the production of any advertisement depicting a demonstration, experiment, or test.

B. Any and all affidavits or certifications submitted by an employee, agent or representative of respondent to a television network or to any other individual or entity, other than counsel for respondent, which affidavit or certification affirms the accuracy or integrity of a demonstration or demonstration techniques contained in an advertisement.

In addition, respondent, its successors and assigns, for three (3) years after the date of service of this Order, shall maintain and make available to the Federal Trade Commission for inspection and copying all signed statements obtained pursuant to section III, above.

V

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporation which may affect compliance obligations arising out of this Order, including but not limited to any change in corporate name or address, dissolution, assignment or sale resulting in the emergence of a successor corporation, and the creation or dissolution of subsidiaries.

VI

It is further ordered That respondent shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Scali, McCabe, Sloves, Inc. ("respondent").

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

This matter concerns advertisements prepared by respondent, an advertising agency, for Volvo automobiles. These ads depict a so-called "monster truck" event, in which an oversized pickup truck drives over a row of automobiles. In the advertisements, the "monster truck" is shown crushing all of the cars in the row with the exception of a Volvo station wagon, which remains intact.

The Commission's proposed complaint in this matter alleges that the respondent falsely represented that the monster truck event included unaltered cars which had been subjected to equal treatment, and that the results shown accurately represent the comparative performance of actual, unaltered Volvos and competing cars under the depicted conditions. According to the FTC's charges, these representations were false and misleading because, among other things, certain of the Volvos used in the demonstration were structurally reinforced, certain structural supports in the competing cars were severed, and the Volvos were subject to less severe treatment than the competing cars by the monster truck.

The proposed consent order contains provisions designed to prevent the respondent from engaging in similar acts and practices in the future. The proposed order also provides for the disgorgement of $150,000.00 by respondent to the United States Treasury.

Part IA of the proposed order prohibits respondent from misrepresenting that a demonstration, picture, experiment or test depicted in an advertisement for any product proves, demonstrates or confirms a material quality, feature or merit of a product or the superiority or comparability of the advertised product relative to any other product. By way of example, the proposed order lists four types of alterations that might result in such a misrepresentation. These include the undisclosed substitution of a material mock-up or prop; the undisclosed material alteration in the depicted products or other material prop or device; the undisclosed use of a visual perspective or camera, film, audio or video technique which misrepresents a material characteristic of the depicted products or another material aspect of the demonstration; and the undisclosed differential treatment of the advertised product and any product to which it is compared. Part IA of the proposed order also provides that it is a defense to an alleged violation of this part of the order that the respondent neither knew nor had reason to know that the demonstration, experiment or test did not prove, demonstrate or confirm the representation.

Part IB of the proposed order prohibits respondent from misrepresenting the strength, structural integrity, or crashworthiness of any automobile or automobile part, or the safety of a vehicle occupant in an automobile collision or accident.

Part II of the proposed order requires respondent to disgorge $150,000.00 to the U.S. Treasury.

The proposed order also requires respondent to distribute copies of the order to each of its operating divisions and to certain of its officers, agents, representatives and employees; to maintain certain materials related to its production of any advertisement depicting a demonstration, experiment or test; to notify the Commission of any changes in its corporate structure that might affect compliance with the order; and to file compliance reports with the Commission.

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

Donald S. Clark,

Secretary.

[FR Doc. 91-21113 Filed 9-3-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Public Meeting on Clinical Practice Guidelines for Visual Impairment Due to Cataracts in the Aging Eye

A public meeting will be held on clinical practice guidelines for the diagnosis and treatment of visual impairment due to cataracts in the aging eye. The guidelines are under development by a panel of experts and health care consumers, arranged for by the Agency for Health Care Policy and Research. A Notice announcing the development of seven sets of clinical practice guidelines and inviting written comments was published in the **Federal Register** on August 28, 1990 (55 FR 35185).

In addition to the solicitation of written material through the **Federal Register**, a series of public meetings is being held to provide an opportunity for interested parties to contribute relevant information and comments concerning the particular guidelines under development.

A public meeting to address guidelines for visual impairment due to cataracts in the aging eye will be held on September 25, as follows:

September 25, 1991, 9 a.m. to Noon—Hyatt Regency Hotel, 2799 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 418-1234.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), enacted on December 19, 1989, added a new Title IX to the Public Health Service Act (the Act) (42 U.S.C. 299-299c-6), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services.

Section 911 of the Act (42 U.S.C. 299b) established, within AHCPR, the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Through this office, AHCPR is arranging for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, other health care practitioners, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912(d) of the Act (42 U.S.C. 299b-1(d)) provides that the first guidelines, standards, performance measures, and review criteria developed should:

1. Account for a significant portion of expenditures under the Medicare program, and have a significant variation in the frequency or the type of treatment provided; or

2. Otherwise meet the needs and priorities of the Medicare program.

Section 914 of the Act (42 U.S.C. 299b-3) lists factors to be considered in establishing priorities for guidelines, including the extent to which the proposed guidelines would:

1. Improve methods of prevention, diagnosis, treatment and clinical management, and thereby benefit a significant number of individuals;

2. Reduce significant variations among clinicians in the particular services and procedures untilized in making diagnoses and providing treatments (and potentially produce savings in health care expenditures); and

3. Reduce clinically significant variations in the outcomes of health care services and procedures.

Based on the statutory criteria, consultation with the Health Care Financing Administration (in accordance with 42 U.S.C. 1320b-12), studies conducted by the Institute of Medicine, availability of reliable research data, and a high degree of professional consensus, the following topics were selected in 1990 for guideline development:

1. Visual Impairment due to Cataract in the Aging Eye.

2. Diagnosis and Treatment of Benign Prostatic Hyperplasia.

3. Urinary Incontinence in the Adult.

4. Risk Assessment, Prevention, and Early Intervention in Management of Pressure Sores.

5. Sickle Cell Disease.

6. Management of Acute Post-Operative Pain.

7. Diagnosis and Treatment of Depressed Outpatients in the Primary Care Setting.

In 1991 the following five new topics have been selected for guideline development by panels of experts and health care consumers:

1. Management of Cancer-Related Pain.

2. Treatment of Stage II and Greater Pressure Ulcers.

3. AIDS and HIV Infection.

4. Low Back Disorders.

5. Development of Quality Determinants of Mammography.

To ensure the development of guidelines, AHCPR, acting through the Forum, has arranged for panels of experts and consumers in the above listed topics, who will develop the specific guidelines. Panel responsibilities include determination of the scope of the guidelines, assessment of the available scientific evidence and clinical consensus, and conducting peer review and pilot review of drafts of the guidelines.

Thus far, public meetings of panels to solict information and comments from interested parties have been held with respect to benign prostatic hyperplasia, depression, management of post-operative pain, pressure ulcers, urinary incontinence, and cataracts.

Arrangements for September 25 Public Meeting on Visual Impairment Due to Cataracts in The Aging Eye

Representatives of organizations and other individuals are invited to provide relevant written documents and information and make a brief (5 minutes or less) oral statement to the panel. Health Systems Research, Inc. (HSR), the organization which provides logistical and technical support to the panels, is making the administrative arrangements for this public meeting on behalf of the panel. Individuals and representatives who would like to attend should register with HSR at the address set out below by September 19 and indicate whether they plan to make an oral statement. Those wishing to make oral statements and provide written comments and information must also submit copies of these to HSR by September 19. If more requests to make oral statements are received than can be accommodated between 9 a.m. and noon on September 25, the chair person will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals and providers, health care consumers, and product and pharmaceutical manufacturers is presented. Those who cannot be allocated their requested speaking time because of time constraints can be assured that their written comments will be considered by the panel in developing the guidelines.

Food and Drug Administration

[Docket No. 91N-0345]

Drug Export; HTLV-I/II Western Blot Test Kits

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cambridge Biotech Corporation has filed an application requesting approval for the export of the biological product HTLV-I/II Western blot test kits to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, France, Italy, Luxembourg, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (P.L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Cambridge Biotech Corp., 365 Plantation St., Worcester, MA 01605, has filed an application requesting approval for the export of the biological product HTLV-I/II Western blot test kits to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, France, Italy, Luxembough, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom. The Human T-Lymphotropic Virus, Types I and II (HTLV-I/II) Western blot test kit is an assay for the detection of antibodies reactive to HTLV-I or HTLV-II antigens in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on August 9, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 16, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: August 21, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-21107 Filed 9-3-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N 0346]

Drug Export; Recombivir™ HTLV-I/II EIA Test Kits

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cambridge Biotech Corporation has filed an application requesting approval for the export of the biological product Recombivir™ HTLV-I/II EIA test kits to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, France, Itlay, Luxembourg, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. Too meet this requirement, the agency is providing notice that Cambridge Biotech Corp., 365 Plantation St., Worcester, MA 01605, has filed an application requesting approval for the export of the biological product Recombivir™ HTLV I/II EIA test kits to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, France, Italy, Luxembourg, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom. The Human T-Lymphotropic Virus, Types I and II (HTLV I/II) is an enzyme immunoassay (ELISA Kit) for the detection of HTLV I or HTLV II antibodies in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on August 9, 1991, which shall be considered the filing date for purposes of the act.

Interested persons my submit relevant information on the information to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch

between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 16, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: August 22, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-21108 Filed 9-3-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0347]

Drug Export; Recombigen® HIV-1/HIV-2 RTD Test Kits

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cambridge Biotech Corporation has filed an application requesting approval for the export of the biological product Recombigen® HIV-1/HIV-2 RTD test kits to Denmark, France, Italy, Norway, Spain, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Docket Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendment Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendment Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Cambridge Biotech Corp. 365 Plantation St. Worcester, MA 01605, has filed an application requesting approval for the export of the biological product Recombigen® HIV-1/HIV-2 (Rapid Test Device) test kits to Denmark, France, Italy, Norway, Spain, Sweden, Switzerland and The United Kingdom. The Recombigen® HIV-1/HIV-2 RTD is an in vitro qualitative assay for the detection of antibodies to Human Immunodeficiency Virus Type 1 (HIV-1) and Human Immunodeficiency Virus Type 2 (HIV-2), in human serum, plasma, or whole blood. The application was received and filed in the Center for Biologics Evaluation and Research on August 9, 1991, which shall be considered the filing data for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 16, 1991 and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: August 22, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-21109 Filed 9-3-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91C-0131]

Ciba Vision Corp.; Withdrawal of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a color additive petition (CAP 1C0232) proposing that the color additive regulations be amended to provide for the safe use of carmine to color contact lenses. The petition was withdrawn by Ciba Vision Corp.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 20, 1991 (56 FR 23069), FDA published a notice that it had filed a petition (CAP 1C0232) from Ciba Vision Corp., 2910 Amwiler Ct., Atlanta, GA 30360, that proposed to amend the color additive regulations to provide for the safe use of carmine to color contact lenses. Ciba Vision Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 71.6).

Dated: August 22, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-21035 Filed 9-3-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91C-0132]

Ciba Vision Corp.; Withdrawal of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a color additive petition (CAP 1C0233) proposing that the color additive regulations be amended to provide for the safe use of mica to color contact lenses. The petition was withdrawn by Ciba Vision Corp.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 20, 1991 (56 FR 23069), FDA published a notice that it had filed a petition (CAP 1C0233) from Ciba Vision Corp., 2910 Amwiler Ct., Atlanta, GA 30360, that proposed to amend the color additive regulations to provide for the safe use of mica to color contact lenses. Ciba Vision Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 71.6).

Dated: August 22, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-21036 Filed 9-3-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0339]

Cottage Cheese Deviating From Identity Standard; Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) IS announcing that it is amending a temporary permit, issued to Bancroft Dairy, Inc., to market test a product designated as "nonfat cottage cheese" that deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128), dry curd cottage cheese (21 CFR 133.129), and lowfat cottage cheese (21 CFR 133.131) to add one additional manufacturing plant, to increase the quantity of test product to be distributed, and to expand the area of distribution. This amendment will provide the permit holder with a broader base for the collection of data on consumer acceptance of the test product.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0106.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 23, 1990 (55 FR 48905), FDA issued a temporary permit under the provisions of 21 CFR 130.17 to Bancroft Dairy, Inc., 1010 South Park St., Madison, WI 53715, to market test in interstate commerce "nonfat cottage cheese." The agency issued the permit to facilitate interstate market testing of a nonfat cottage cheese, formulated from dry curd cottage cheese and a dressing, such that the finished product contains less than 0.4 percent milkfat. The product deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128) and lowfat cottage cheese (21 CFR 133.131) in that the milkfat content of cottage cheese is not less than 4.0 percent and the milkfat content of lowfat cottage cheese ranges from 0.5 to 2.0 percent. The test product also deviates from the U.S. standard of identity for dry curd cottage cheese (21 CFR 133.129) because of the added dressing. the test product meets all requirements of the standards with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to cottage cheese but contains less fat.

Bancroft Dairy, Inc., has requested that FDA amend its temporary permit: (1) To allow a second plant, located at 424 East Patrick St., Frederick, MD 21701, to concurrently manufacture and distribute "nonfat cottage cheese," (2) to increase the quantity of test product by 226,800 kilograms (kg) (500,000 pounds (lb)) to 1,701,000 kg (3,750,000 lb), and (3) to expand the area of distribution to include the states of Delaware, Maryland, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, and West Virginia. The purpose of the amendment is to provide the permit holder with a broader base for the collection of data on consumer acceptance of the test product.

Therefore, under the provision of 21 CFR 130.17(f), FDA is amending the temporary permit: (1) To include a second manufacturing plant at Frederick, MD, (2) to increase the quantity of test product to 1,701,000 kg, and (3) to provide for distribution in the additional states of Delaware, Maryland, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, and West Virginia. All other terms and conditions of this permit remain the same.

Dated: August 23, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-21037 Filed 9-3-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0349]

Drug Export; Optiray® (Ioversol) Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mallinckrodt Medical, Inc., has filed an application requesting approval for the export of the human drug Optiray® (ioversol) Injection to France, Belgium Luxembourg, Switzerland, Germany, Holland, Spain, and the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frank R. Fazzari, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION; The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Mallinckrodt Medical, Inc., 675 McDonnell Blvd., St. Louis, MO 63134, has filed an application requesting approval for the export of the drug Optiray® (ioversol) Injection to France, Belgium Luxembourg, Switzerland, Germany, Holland, Spain, and the United Kingdom. This product is used intravascularly as a diagnostic radiopaque media. The application was received and filed in the Center for Drug Evaluation and Research on July 23, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket

number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 16, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: August 22, 1991.

Sammie R. Young,

Acting Director Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 91-21110 Filed 9-3-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0350]

Bristol-Myers Squibb, et al.; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) withdraws approval of seven new drug applications (NDA's). The holders of the NDA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: October 4, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Maizel, Center for Drug Evaluation and Research (HFD-53), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4320.

SUPPLEMENTARY INFORMATION: The holders of the NDA's listed below have informed FDA that these drug products are no longer marketed and requested that FDA withdraw approval of the applications. The applicants have also, by request, waived their opportunity for a hearing.

NDA #	Drug name	Applicant name & address
5-756	DRINALFA (methamphetamine hydrochloride) Tablets.	Bristol-Myers Squibb, Pharmaceutical Research Institute, P.O. Box 4000 Princeton, NJ 08543-4000.
9-927	Tylenol Acetaminophen Elixir	McNeil Consumer Products Co., Camp Hil Rd., Fort Washington, PA 19034.
11-630	Tylenol Acetaminophen Regular Strength Tablets	Do.
13-420	Trest (methizene hydrochlrride) Tablets	Sandoz Pharmaceutical Corp., Division of Sandoz Inc., 59 Route 10, East Hanover, NJ 07936.
17-027	Lipo-Hepin (heparin sodium injection, USP)	3M Pharmaceuticals, 3M Center Bldg. 270-3A-01, St. Paul, MN 55144-1000.
17-879	Ibrin (fibrinogen I-125)	Amersham Corp., 2636 South Clearbrook Dr., Arlington Heights, IL 60005-4692.
50-132	Syntetrin (rolitetracycline) IV	Bristol-Myers Co., U.S. Pharmaceutical Group, Evansville, IN 47721-0001.

Therefore, under section 505(e) of 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 NDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective October 4, 1991.

Dated: August 22, 1991.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 91-21106 Filed 9-3-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91E-0284]

Determination of Regulatory Review Period for Purposes of Patent Extension; Lotensin®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Lotensin® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Lotensin® (benazepril hydrochloride) which is indicated for the treatment of hypertension. It may be used alone or in combination with thiazide diuretics. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Lotensin® (U.S. Patent No. 4,410,520) from Ciba-Geigy Corp. and requested FDA's assistance in determining the patent's eligibility for patent term

restoration. FDA, in a letter dated August 7, 1991, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Lotensin® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Lotensin® is 2,764 days. Of this time, 1,679 days occurred during the testing phase of the regulatory review period, while 1,085 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* December 2, 1983. The applicant claims September 20, 1983, as the date the investigational new drug application (IND) for Lotensin® became effective. However, FDA records indicate that the IND became effective on December 2, 1983.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* July 6, 1988. The applicant claims June 28, 1988, as the date the new drug application (NDA) for Lotensin® (NDA 19–851) was initially submitted. However, FDA records indicate that the application was received on July 6, 1988.

3. *The date the application was approved:* June 25, 1991. FDA has verified the applicant's claim that NDA 19–851 was approved on June 25, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before November 4, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before March 2, 1992 for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 27, 1991.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 91–21155 Filed 9–3–91; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meetings: Minneapolis District Office, chaired by John Feldman, District Director. The topic to be discussed is food labeling.

DATES: Wednesday, September 11, 1991, 3 p.m. to 4:30 p.m.

ADDRESSES: University of Wisconsin Extension Office, Marathon County Courthouse, 500 Forest St., Wausau, WI 54401.

DATES: Monday, September 16, 1991, 3:30 p.m. to 5 p.m.

ADDRESSES: University of Wisconsin Extension Office, 57 Fairgrounds Dr., Madison, WI 53713.

FOR FURTHER INFORMATION CONTACT: Steve Davis, Public Affairs Specialist, Food and Drug Administration, 517 East Wisconsin Avenue, Milwaukee, WI 53202, 414–297–3097.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identity and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: August 29, 1991

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91–21156 Filed 9–3–91; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administr

[HSQ–197–FN]

RIN 0938–

Medicare Program; Peer Review Organizations: Revised Scopes of Work for Delaware, Missouri, Montana, Nebraska, New Jersey, Nevada, Oklahoma, Rhode Island, South Carolina, Washington, and Wyoming

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice describes requirements for the review activities of Utilization and Quality Control Peer Review Organizations (PROs) for the next contract cycle in the States listed above. Section 1153(h)(1) of the Social Security Act requires us to publish any new policy or procedure adopted by the Secretary that affects substantially the performance of PRO contract obligations at least 30 days before the date the policy or procedure is to be used

Specifically, this notice describes significant changes in the way in which cases will be selected for review and also describes continuing requirements. This notice also implements provisions of the Omnibus Budget Reconciliation Act of 1990 and announces the future direction of the PRO program.

EFFECTIVE DATES: October 1, 1991, for Delaware, Missouri, Montana, Nebraska, Oklahoma, Rhode Island, Washington, and Wyoming; November 1, 1991, for Nevada; and December 1, 1991, for New Jersey and South Carolina.

FOR FURTHER INFORMATION CONTACT: Patricia Booth (301) 966–6860.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (title I, subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248) established the Utilization and Quality Control Peer Review Organization (PRO) program. Section 1153, as modified by the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), requires that the Secretary enter into contracts, which may be renewable on a triennial basis, with private peer review organizations for the review of services for which payment may be made in whole or in part by the Medicare program.

PROs review services furnished to Medicare beneficiaries to determine if the services met professionally recognized standards of care and were

medically necessary and delivered in the most appropriate setting. The first level of review of the beneficiaries' medical records is performed by nonphysician reviewers, using criteria or generic quality screens. If the case fails the criteria or screens, it is referred to a physician reviewer, who must be engaged in active practice and have active admitting privileges in the PRO area. If, after review of the complete medical records, the PRO physician believes there might be a problem, the physician and provider are given an opportunity to discuss the case with the PRO. (In the case of potential quality problems, only the physician or provider that is the source of the potential problems is afforded the opportunity to discuss the case.)

The specific review obligations of PROs are outlined in a document known as the Scope of Work, which defines the duties and Medicare review functions performed by the PRO. Such duties and functions include the implementation and operation of a review system to assure the quality of services for which payment may be made, in whole or in part, under title XVIII of the Social Security Act and to eliminate unreasonable, unnecessary, and inappropriate care provided to Medicare beneficiaries. The first Scope of Work covered the 1984–1986 contract period. On November 12, 1985 (50 FR 46702), we published a notice in the **Federal Register** that announced the availability of the proposed second Scope of Work and solicited comments on its content. We subsequently considered the comments and incorporated them into the final second Scope of Work. The second Scope of Work was effective for the 1986–1988 contract period.

On September 12, 1988 (53 FR 35234), we published a notice in the **Federal Register** that announced the development of the third Scope of Work for 48 States (that is, all States except New Jersey and Maryland), the District of Columbia, and Puerto Rico. A subsequent notice, published on March 1, 1989, (54 FR 8599) described the third Scope of Work for Maryland and New Jersey, the Virgin Islands, and the single PRO areas consisting of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

On July 31, 1989 (54 FR 31576), we published a notice in the **Federal Register** stating that the PRO area of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, was designated as part of the Hawaii PRO geographical area effective September 29, 1989. The Hawaii PRO Scope of Work was revised at that time to reflect that change in area designation.

II. Scope of Work

Implementation of the Scope of Work described herein will be in conjunction with the renewal of current contracts, where the PRO has been found to be an acceptable performer (that is, passed the final evaluation). The Scope of Work is the result of extensive analysis of the review requirements and results achieved under the third Scope of Work. In an effort to achieve a more systematic, efficient and effective approach to quality assurance in the Medicare program, we are redirecting PRO review activities. Where we made changes, we did so to create a more effective review system and to make more efficient use of PRO resources. For example, HCFA will now select the PRO's samples.

Additionally the Scope of Work incorporates the provisions of Public Law 101–508, as described in section III of this notice.

An individual or organization interested in obtaining copies of the new Scope of Work should address requests to: Edward T. Hodges, Division of Health Standards Contracts, Office of Budget and Administration, room G–M–1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland, 21207.

III. Implementation of Recent Legislation

The Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, enacted on November 5, 1990) contained several changes to the PRO legislation. Provisions of Public Law 101–508 that changed PRO requirements follow:

- Section 4205(a) requires that, before recommending a sanction to the Office of Inspector General (OIG), the PRO, if appropriate, allow the practitioner or other person a reasonable opportunity to enter into and successfully complete a corrective action plan, which may include remedial education.
- Section 4205(b) requires that PROs shall, to the extent necessary and appropriate, use the services of podiatrists and optometrists in the performance of their contracts.
- Section 4205(c)–(d) requires increased coordination and information sharing by PROs with Medicare carriers and State medical boards/licensing boards.
- Section 4205(e) clarifies that no document or other information produced by the PRO in connection with its deliberations in making determinations about utilization or quality of care must be subject to subpoena or discovery in any administrative or civil proceeding.
- Section 4207(a) requires the PRO, as requested by the Secretary, to review and report about alleged anti-dumping cases with regard to medical issues that are raised.

Accordingly, we made changes to the Scope of Work to implement these provisions.

IV. Specific Provisions of the Scope of Work

A. Continuing Requirements

The PRO must—

- Perform the following review activities on each case selected for retrospective review: Quality, discharge, invasive procedure (if applicable), admission, and coverage review as well as diagnosis-related group (DRG) validation and, if the case is denied, application of the limitation of liability provisions.
- Maintain an internal quality control system that requires a sampling of the accuracy of every nonphysician and physician reviewer's work products.
- Meet certain organizational (for example, nonphysician consumer representation on its board) and eligibility requirements (that is, be a physician sponsored or access organization).
- Demonstrate that it meets certain other requirements including that it is not a health care facility, an affiliate of a health care facility, or an association of such facilities and that it can operate with complete independence and objectivity.
- Perform the following reviews:
  - —Day and cost outliers, each at a 25 percent level.
  - —100 percent of the cases identified by the Medicare Code Editor and those where the hospital has requested an adjustment to a higher weighted DRG.
- Set dynamic objectives to correct identified problems when other required interventions (for example, as required under the Quality Intervention Plan (QIP)) fail to correct the problem. This allows PROs to focus review on validated utilization and quality problems not corrected through required interventions. The PRO must, however, clearly delineate to HCFA the relationship between productivity measures and the additional work effort; that is, the cost effectiveness associated with the additional level of effort.
- Investigate beneficiary complaints about the quality of care and respond appropriately to the beneficiary (or his/her representative).

• When appropriate, initiate sanction recommendations to the OIG regarding practitioners and other persons.

• Review freestanding cardiac catheterization facilities when requested.

• Coordinate the exchange of information with Medicare fiscal intermediaries and carriers.

• Upon request, reconsider initial denial determinations and review DRG changes. When a hearing is requested, the PRO must prepare the appeals folder.

• Upon request, review the accuracy of a hospital issued notice of noncoverage and perform review for the OIG as part of its investigation of possible areas of fraud and abuse. In addition, the PRO monitors all hospitals to ensure that an accurate "Important Message from Medicare" is given in a timely fashion to all Medicare beneficiaries.

• Publish and distribute annually to providers and practitioners subject to review a report that describes the PROs findings with respect to the types of cases in which the PRO has frequently determined that care or services were unnecessary, delivered in an inappropriate setting, or did not meet professionally recognized standards of care.

B. Continuing Requirements with Some Amendment(s)

The PRO must—

• Continue to use HCFA's QIP, a prescribed blueprint that requires each PRO to implement specific interventions in response to certain thresholds of confirmed quality problems. The three-level severity indexing system continues with the same point value for each level as in the prior Scope of Work (that is, Level I = 1 point. Level II = 5 points, Level III = 25 points). Potential Level I cases are placed in a "pending" status until a threshold is met or exceeded. When that threshold is met or exceeded, the physician and/or provider (that is, the source of the potential quality problem) is given an opportunity to discuss the issue with and submit additional information (if any) to the PRO. In response to comments from large hospitals that they have the same numerical threshold as small hospitals for having cases coming out of pending status, we have developed thresholds that recognize differences in case review volume and require that the PRO use these for determining when to investigate the pended cases.

• Review 100 percent of cases assigned to DRG 472 (Extensive Burns with Operating Room Procedure) and 50 percent of those assigned to DRG 468 (Extensive Operating Room Procedure Unrelated to Principal Diagnosis). (Under the third Scope of Work, PROs reviewed these 2 DRGs at the same level plus all cases grouping to DRGs 462 (Rehabilitation), 475 (Respiratory System Diagnosis with Ventilator Support), and 385–391 (Major Diagnostic Category 15—Newborns and other Neonates with Conditions Originating in the Perinatal Period).

• Review a 5 percent random sample (as opposed to a 15 percent sample under the third Scope of Work) of cases from specialized units in prospective payment system hospitals and hospitals certified as being exempt from Medicare's prospective payment system.

• Review a 3 percent random sample of surgical procedures designated on Medicare's ambulatory surgical list. (These formerly were reviewed at a 5 percent rate). These surgeries are performed in ambulatory surgery centers and hospital outpatient areas.

• Review for Medicare payment all cases for an assistant at surgery for certain cataract procedures (CPT codes: 66852, 66920, 66940, 66984, and 66985). (Formerly, all assistants at cataract extractions or subsequent lens insertions required PRO prior approval. Pub. L. 101–508, however, mandated that payment for an assistant at surgery could be made only when an assistant is used at a particular surgery 5 percent or more of the time. Thus, the codes listed above are the only codes which are equal to or exceed that 5 percent threshold.) In addition, the PRO will perform a retrospective validation review of 5 percent of theses cases.

• Enforce the requirements of intensified review whenever the quarterly error rate for utilization issues exceeds the allowable tolerance levels identified by HCFA (that is, 5 percent with a minimum of 6 cases).

• Report data to HCFA on a regular basis; however, we have modified the data elements to be reported and the reporting of a PRO's financial information.

• Conduct a beneficiary outreach program, which requires, at a minimum, that the PRO maintain a hotline for beneficiaries, provide educational programs at least twice a year and certain informational materials, and coordinate similar activities with other concerned organizations. (Under the third Scope of Work, the PRO was required to sponsor beneficiary meetings four times a year. The PROs' experiences to date have been that these meetings were poorly attended; therefore, we have reduced the requirement.)

• Offer to meet with the medical and administrative staffs of hospitals; however, the requirement has been changed from quarterly to semiannually.

• In accordance with the Health Maintenance Organization/Competitive Medical Plan (HMO/CMP) Scope of Work, review inpatient and ambulatory care provided to a sample of Medicare beneficiaries who have enrolled in a risk-based HMO/CMP. The only major change to this Scope of Work is that the PRO will use the same QIP required in the basic Scope of Work.

C. New Requirements

The PRO must—

• Review on a postpayment basis all inpatient hospital care rendered to a 15 percent sample of beneficiaries selected by HCFA; that is, a beneficiary-specific, rather than a provider-specific sample. We have increased the random sample from 3 percent to 15 percent and, to offset the increase, we have eliminated or reduced review efforts in other areas. We believe that this sampling approach is more scientific and systematic. For the selected beneficiaries, the PRO must review all care provided in short term/acute/general (for example, prospective payment system hospitals) and specialty hospitals and units exempt from the prospective payment system. When a beneficiary in the 15 percent sample has 2 identified hospital admissions within 31 days of each other and receives intervening care, the PRO will review all of the intervening care. Intervening care is defined as emergency room services, observation services, continuing outpatient hospital services, skilled nursing facility stays, home health care, and ambulatory surgery services.

• Offer to meet with State hospital associations and medical societies at least quarterly to discuss, for example, review process issues and PRO findings. We believe that these interactions are vital to the success of a peer review program.

• Begin the initial phase of analytic work which supports the shift in focus of the PRO program (as described in VI. below) from individual case review to analysis of patterns of use and outcome. PROs are required to identify, through analysis of Medicare billing data and other files (for example, PRO review results), instances where outcomes of care are significantly different from what would have been expected given the characteristics of the patients treated. This information will then be shared with affected providers and, eventually, the medical community in ways which promote changes in behavior. This program of analysis of

variations of use and outcome by geographic area will provide a foundation for more sophisticated analytic work to be undertaken once the clinical data base described in VI. becomes available for use.

V. Prior Authorization Requirements

We have changed the requirement that PROs conduct prior authorization of 10 procedures (performed under the discretionary authority of section 1154 of the Social Security Act) from one which is mandatory to one that is a more dynamic tool to be used when data, including PRO review results, support such an approach. This change is effective for all PRO areas, not just the States mentioned above, beginning October 1, 1991. Thus, any surgeries performed on or after October 1, 1991, will not require PRO prior approval unless the PRO notifies the providers and practitioners that it will require prior authorization for certain procedures, based upon HCFA's approval of such PRO review activities.

VI. Future Direction of the PRO Program

Under the current PRO program, PROs review a sample of cases and, primarily, have a sentinel effect on the quality of care. To enhance the effectiveness of peer review efforts, we are moving the program from a retrospective, case-by-case paper review of individual medical records to a system which is founded on systematic, computerized analysis of large data bases to identify patterns of use and patterns of outcome. The analyses of this data will be shared with the hospitals and the overall medical community to encourage changes in behavior.

To that end, HCFA has developed a Uniform Clinical Data Set (UCDS). When fully implemented, the PROs will abstract, according to well documented rules and procedures, all of the hospital records selected for review. The abstracted information will then be screened by an "expert system," which will either find no problem with the case or identify it for physician review. Also, the abstracted clinical data, when linked to currently available data, will establish an epidemiologic data base that will enable the PROs and HCFA to characterize patterns of care, adjusted for sociodemographic characteristics and risk-adjusted patterns of outcomes.

UCDS is a standard set of data about each hospitalization. The short term goal of UCDS is to select cases for PRO physician review in each State by the identical standards, thus eliminating the differences in PRO review results attributable to individual PRO non-physician reviewer judgment.

The UCDS data acquisition software is interactive and designed to be used by a trained abstractor to collect data from a patient's medical record using desktop or portable computer hardware. Although the UCDS set includes approximately 1600 elements, the number of data items collected for each case will vary depending on the patient's medical condition. On average, 250–300 elements will be collected per case.

The data elements collected fall into the following categories:

- Administrative Information (for example, patient identifying information, diagnosis and procedure codes, discharge disposition);
- Sociodemographic Data;
- Admission Status;
- Admission Medication History;
- History of Permanent Anatomic Changes;
- History and Physical;
- Laboratory Findings;
- Selected Diagnostic Tests;
- Endoscopic Procedures;
- Operative Episodes;
- Non-Invasive Treatment Interventions;
- Hospital Course (for example, special care unit day);
- Patient Discharge Status;
- Discharge Planning.

The algorithm flags used by UCDS are the result of the operation of the "expert system," a body of several thousand rules generated by expert consensus panels to permit a consistent application of the rules and criteria employed by PROs. The rules are grouped into three modules, one which evaluates the necessity of an admission, another which evaluates quality, and the third which examines the stability of a patient at discharge. The modules are further divided into algorithms.

"Admission Module"
- Surgical
- Disease Specific
- Organ Specific

"Quality Module"
- HCFA Generic Quality Screens

"Discharge Module"
- Discharge Status and Disposition

A. Admission Necessity Algorithms

Admission necessity is determined by the first three sets of algorithms listed above. The "surgery" algorithms evaluate the most common and important surgical admissions; the "disease specific" algorithms evaluate the major types of medical admissions and focus on particular physiologic disturbances; and the "organ specific" algorithms, which are more generic in nature, evaluate disorders associated with organ systems.

B. Quality of Care Algorithms

Quality of care is evaluated by "Generic Quality Screens". All cases are evaluated by these algorithms. The Generic Quality algorithms include the following areas:

- Adequacy of discharge planning
- Medical stability at discharge
- Deaths
- Infections
- Unscheduled return to surgery
- Iatrogenic events

C. Discharge Module

The Discharge algorithm evaluates the appropriateness of the discharge, with particular emphasis on whether or not the discharge was premature.

The PROs whose Scope of Work is being addressed in this notice will not begin using the UCDS data collection tool or algorithms until some time later in their contracts—approximately 9–12 months after the effective date. Prior to their implementation of the UCDS, they will notify the affected hospitals and physicians and will share the algorithms with them.

VII. Collection of Information Requirements

Provisions of this notice would be implemented by information collection requirements contained in revised PRO quarterly and monthly reporting forms. As required by section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), these revised forms have been sent to the Office of Management and Budget (OMB) for its approval. The revised PRO reporting requirements will be effective upon OMB approval and notice of OMB's action will be published in the **Federal Register**.

Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 13.774, Medicare-Supplementary Medical Insurance.

Dated: August 21, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91–21252 Filed 8–30–91; 1:21 pm]

BILLING CODE 4120–01–M

National Institutes of Health

National Cancer Institute; Meeting

Notice is hereby given of the meeting of the Acrylonitrile Study Advisory Panel, National Cancer Institute, National Institutes of Health, on October 23, 1991, Conference Room H, Executive Plaza North, 6130 Executive Blvd., Rockville, Maryland 20892. The entire meeting will be open from 10:30

a.m. to adjournment for discussion and review of the study progress. Attendance by the public will be limited to space available.

Mrs. Carole A. Frank, the Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301) 496–5708 will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Acrylonitrile Study Advisory Panel, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6927 will provide substantive program information, upon request.

Dated: August 27, 1991.

Jeanne N. Ketley,

Acting Committee Management Officer, NIH.

[FR Doc. 91–21060 Filed 9–3–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting of the Deafness and Other Communication Disorders Programs Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Deafness and Other Communication Disorders Programs Advisory Committee on October 15, 1991. The meeting will take place from 8:30 a.m. to 5 p.m. in Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting, which will be open to the public, is being held for the orientation of new members, a report from the Director NIDCO, and discussion of the Extramural Research and Training Support programs. Attendance by the public will be limited to space available.

Further information concerning the Committee meeting may be obtained from Dr. Ralph F. Naunton, Executive Secretary, NDCD Programs Advisory Committee, National Institute on Deafness and Other Communication Disorders, Executive Plaza South, room 400B, National Institutes of Health, Bethesda, Maryland 20892, 301–496–1804. A summary of the meeting and a roster of the members may also be obtained from his office.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: August 27, 1991.

Jeanne N. Ketley,

Acting Committee Management Officer, NIH.

[FR Doc. 91–21061 Filed 9–3–91; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Indian Health Service; Correction Notice; Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service, Chapter HG (Indian Health Service) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (52 FR 47053–67, December 11, 1987, as most recently amended at 56 FR 32440–41, July 16, 1991) is further amended to correct a statement and the Order of Succession that were published in 55 FR 34764–66, August 24, 1990; 55 FR 49708, November 30, 1990; and 55 FR 50886–7, December 11, 1990.

Indian Health Service

Under Chapter HG, Section HG–20, Functions, make the following changes:

Under the heading, Office of Administration and Management (HGA2), Division of Administrative Services (HGA22), delete item number (1) and substitute the following: "(1) Plans, develops and coordinates office services, records, personal property and other administrative services to support the IHS Headquarters and field programs."

Under Section HG.30. Order of Succession, Alaska Native Health Area Office, change item (3) to Director, Office of Patient Care Standards and change item (4) to Director, Alaska Native Medical Center.

Under Section HG.30. Order of Succession, Aberdeen Area Office, change item (1) to Area Director, change item (2) to Deputy Director, change item (3) to Associate Director, Office of Planning and Legislation, change item (4) to Service Unit Affairs Officer, Office of the Area Director, change item (5) to Associate Director, Office of Environmental Health and Engineering, and change item (6) to Chief Medical Officer.

Dated: August 21, 1991.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 91–21041 Filed 9–3–91; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–4370–02]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Wild Horse and Burro Advisory Board.

SUMMARY: Notice is hereby given that the Wild Horse and Burro Advisory Board will meet in Denver, Colorado, October 3–5, 1991, at the Stapleton Plaza Hotel, 3333 Quebec Street, Denver, Colorado, from 8 a.m. to 5 p.m. on October 3 and 4 and from 8 a.m. to 2 p.m. on October 5.

DATES: October 3–5, 1991.

ADDRESSES: Director (250) Bureau of Land Management, Premier Building—room 901, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION OR TO SCHEDULE OR SUBMIT TESTIMONY, CONTACT: John S. Boyles, Chief, Division of Wild Horses and Burros, at the above address; telephone (202) 653–9215.

SUPPLEMENTARY INFORMATION: The purpose of the Board is to advise the Secretary of the Interior; the Director, Bureau of Land Management (BLM); the Secretary of Agriculture; and the Chief, Forest Service, on matters pertaining to management and protection of wild free-roaming horses and burros on the Nation's public lands. At this meeting, the Board will discuss topics shown in the agenda below.

The meeting will be open to the public. Members of the public may make oral statements to the Board on October 3, 1991, starting at 3:30 p.m. Persons wishing to make statements should notify the BLM at the address or telephone number given above by September 25, so that time can be scheduled for their presentations. Depending on the number of speakers, it may be necessary to limit the length of each presentation. Speakers should address specific wild horse and burro issues related to the topics on the agenda. Speakers must submit a written copy of their testimony to the address given above or bring a written copy to the meeting. Persons who wish to provide testimony but who are unable to attend the meeting may submit a written statement to the address above.

The proposed agenda for the meeting is:

Thursday, October 3: Morning: Subcommittee report from Board

members on monitoring herds and habitat; discussion of wild horse and burro research and Board recommendation.

Afternoon: Report to Board on progress on BLM outreach plan for wild horse and burro program; discussion of adoption fees and Board recommendation; public comment period; report to Board on downsizing BLM Washington Office.

Friday, October 4: Morning: Subcommittee report from Board member on managing free-roaming population; discussion of General Accounting Office report and Board recommendation.

Afternoon: Board discussion of fiscal expenditures and recommendation; report on status of South Dakota and Oklahoma sanctuaries; report on BLM discussions with Oklahoma Department of Corrections to establish a wild horse training facility; report on Nevada BLM proposal to establish a wild horse and burro center; report on Range of Our Vision.

Saturday, October 5: Board develops schedule and plan for report to the Secretaries of Agriculture and the Interior.

Dated: August 29, 1991.

Susan Lamson,

Deputy Director for External Affairs.

[FR Doc. 91-21172 Filed 9-3-91; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

National Capital Region, Public Affairs; Notice of Public Meeting

The National Park Service is seeking public comments and suggestions on the planning of the 1991 Christmas Pageant of Peace, which opens December 12 on the Ellipse, south of the White House.

A public meeting will be held at the Park Service's National Capital Region Building in East Potomac Park at 1100 Ohio Drive, SW., room 234, at 10 a.m., October 9, 1991.

Persons who would like to comment at the meeting should notify the National Park Service by September 27, by calling the Office of Public Affairs between 9 a.m. and 4 p.m., weekdays at (202) 619-7225. Persons who cannot attend the meeting may send written comments to Regional Director, National Capital Region, 1100 Ohio Drive SW., Washington, DC 20242. Written comments will be accepted until October 4, 1991.

Dated: August 23, 1991.

Ronald N. Wrye,

Action Regional Director, National Capital Region.

[FR Doc. 91-21158 Filed 9-3-91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 21, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by September 19, 1991.

Carol D. Shull,

Chief of Registration, National Register.

California

Contra Costa County

Black Diamond Mines, Somersville Rd. SE of Antioch, Antioch vicinity, 91001425

Lake County

Borax Lake—Hodges Archeological Site, Address Restricted, Clearlake vicinity, 91001424

Colorado

Douglas County

Sinclaire, Reginald, House, 6154 Perry Park Rd., Larkspur, 91001418

Iowa

Audubon County

Bennedsen, Boldt, and Hansen Building (Ethnic Historic Settlement of Shelby and Audubon Counties MPS), Main St., Kimballton, 91001460

Bethany Danish Evangelical Lutheran Church (Ethnic Historic Settlement of Shelby and Audubon Counties MPS), 1.5 mi. N of IA 44, 1 mi. E. of Hwy. 68, Kimballton vicinity, 91001457

Bush, John D., House (Ethnic Historic Settlement of Shelby and Audubon Counties MPS), 219 N. Kilworth, Exira, 91001461

Hansen, Andrew P., Farmstead (Ethnic Historic Settlement of Shelby and Audubon Counties MPS), Between IA 44 and Co Rd. P58, on Little Elkhorn Cr., Brayton vicinity, 91001458

Immanuel Danish Evangelical Lutheran Church (Ethnic Historic Settlement of Shelby and Audubon Counties MPS), W. Second St., E. side, Kimballton, 91001462

Jorgensen, Hans J., Barn (Ethnic Historic Settlement of Shelby and Audubon Counties MPS), Jct. of IA 44 and Main St., Kimballton vicinity, 91001452

Koch, Hans M., House (Ethnic Historic Settlement of Shelby and Audubon Counties MPS), IA 173, W. side, 0.5 mi. S of Kimballton, Kimballton vicinity, 91001453

Larsen, Jens T., House (Ethnic Historic Settlement of Shelby and Audubon Counties MPS), 103 Main St., Kimballton, 91001451

Poplar Rural District (Ethnic Historic Settlement of Shelby and Audubon Counties MPS), Roughly, area from Poplar S and W to Wolf Cr., Jacksonville vicinity, 91001463

Shelby County

Heese, J. C., Lumber Yard (Ethnic Historic Settlement of Shelby and Audubon Counties MPS), Railway St., E. side, Earling, 91001454

Larsen, Chris, House (Ethnic Historic Settlement of Shelby and Audubon Counties MPS), 4215 Main St., Elk Horn, 91001456

Poldberg, Chris, Farmstead (Ethnic Historic Settlement of Shelby and Audubon Counties MPS), 0.5 mi. S of IA 44 on Wolf Cr., Jacksonville vicinity, 91001459

Rewerts, George, House (Ethnic Historic Settlement of Shelby and Audubon Counties MPS), 306 8th Ave., Defiance, 91001450

Saint Boniface Catholic Church District (Ethnic Historic Settlement of Shelby and Audubon Counties MPS), Three blocks N of Co. Rd. F32, Westphalia, 91001449

Kansas

Dickinson County

Johntz, John, House, 214 N. Walnut, Abilene, 91001437

Louisiana

Orleans Parish

Longue Vue House and Gardens, 7 Bamboo Rd., New Orleans, 91001419

St James Parish

Olive Jeanette, Main St., Lutcher, 91001421

Maryland

Worcester County

Merry Sherwood, 8909 Worcester Hwy., Berlin vicinity, 91001420

Mississippi

Coahoma County

Sunflower Landing, Address Restricted, Rena Lara vicinity, 91001422

Grenada County

Providence Cemetery, Rt. 4, Providence Rd. E of Grenada, Grenada vicinity, 91001423

Ohio

Cuyahoga County

Cleveland Discount Building, 815 Superior Ave. NE., Cleveland, 91001416

Delaware County

Bieber, George, House and Farm (Historic Mill-Related Resources of Liberty and Delaware Townships MPS), 2010 Stratford Rd., Delaware vicinity, 91001426

Bieber, James, Saw Mill Ruins (Historic Mill-Related Resources of Liberty and Delaware Township MPS), Address Restricted, Delaware vicinity, 91001428
Meeker, Forrest, House and Farm (Historic Mill-Related Resources of Liberty and Delaware Townships MPS), 2690 Stratford Rd., Delaware vicinity, 91001427
Mill Worker House No. 1 (Historic Mill-Related Resources of Liberty and Delaware Townships MPS), 2665 Stratford Rd., Delaware vicinity, 91001431
Mill Worker House No. 3 (Historic Mill-Related Resources of Liberty and Delaware Townships MPS), 2505 Stratford Rd., Delaware vicinity, 91001433
Mill Worker House No. 4 (Historic Mill-Related Resources of Liberty and Delaware Townships MPS), 2441 Stratford Rd., Delaware vicinity, 91001434
Mill Worker House No. 5 (Historic Mill-Related Resources of Liberty and Delaware Townships MPS), 2441 Stratford Rd., Delaware vicinity, 91001435
Perry, Norman Dewey, House (Historic Mill-Related Resources of Liberty and Delaware Townships MPS), 2367 Stratford Rd., Delaware vicinity, 91001429
Statford Methodist Episcopal Church (Historic Mill-Related Resources of Liberty and Delaware Townships MPS), Jct. of US 23 and OH 315, Delaware vicinity, 91001436

Hamilton County

Tonkens, Gerald B. and Beverley, House, 6980 Knoll Rd., Cincinnati, 91001414

Summit County

Robinson, Byron W., House, 715 E. Buchtel Ave., Akron, 91001415

[FR Doc. 91–21159 Filed 9–3–91; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Notifications; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center For Manufacturing Sciences, Inc. ("NCMS"), on July 25, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies recently were accepted as active members of NCMS:

CAD/CAM Integration, Inc.
Great Lakes Industry, Inc.
Northern Research and Engineering Corporation
Omni-Circuits, Inc.
RWD Technologies, Inc.

The following organizations recently were accepted as affiliate members of NCMS:

American Machine Tool Distributors Association
Community College Association for Technology Transfer
Defense Systems Management College
Environmental Research Institute of Michigan
Northeastern Illinois University

The following companies recently resigned as active members of NCMS:

Advanced Material Process Corporation
AirBorn, Incorporated
Gilbert/Commonwealth, Inc.
Grobet File Company of America, Inc.
Lodge & Shipley, Inc.
Metal Improvement Company, Inc.
Metcut Research Associates, Inc.
Modern Engineering Service Company
Motorola Computer X, Inc.
Transform Logic Corporation
Valisys Corporation
The Vulcan Tool Company
Weldon Machine Tool, Inc.
Weyburn-Bartel, Inc.

Except as indicated above, no other changes have been made in the membership, objectives, or planned activities of NCMS.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act, notice of which the Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 Fr 8375). NCMS filed additional notifications on April 15, 1988, and May 5, 1988, notice of which the Department published in the **Federal Register** on June 2, 1988 (53 FR 20194). NCMS also filed additional notifications on July 11, 1988, September 13, 1988, December 8, 1988, March 9, 1989, August 10, 1989, November 3, 1989, January 29, 1990, April 27, 1990, July 31, 1990, November 7, 1990, February 5, 1991, March 18, 1991, and April 29, 1991, notices of which the Department published on August 19, 1988 (53 FR 31771), November 4, 1988 (53 FR 44680), January 18, 1989 (54 FR 2006), April 13, 1989 (54 FR 14878), September 18, 1989 (54 FR 38461), November 29, 1989 (54 FR 49122), February 28, 1990 (55 FR 7045), June 5, 1990 (55 FR 22964), August 28, 1990 (55 FR 35194), December 10, 1990 (55 FR 50786), March 12, 1991 (56 FR 10444), May 16, 1991 (56 FR 22740–41), and June 13, 1991 (56 FR 27273), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–21052 Filed 9–3–91; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984; Notifications; Petroleum Environmental Research Forum

Notice is hereby given that, on July 22, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum ("PERF") Project No. 89–05, entitled "PERF Project No. 89–05: Scrap Metal Recycling of Oil and Gas Equipment Contaminated with Naturally Occurring Radioactive Material ("NORM")," filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to the project and (2) the nature and objective of the research program to be performed in accordance with said project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties participating in Project No. 89–05, together with the nature and objectives of the research program, are given below.

The current parties to PERF Project No. 89–05 identified by this notice are:

Conoco Inc., P.O. Box 1267, Attention: Mr. B.J. Williams, Ponca City, Oklahoma 74603
Exxon Production Research Company, P.O. Box 2189, Houston, Texas 77252–2189
Amoco Production Company, 7201 E. 38th Street, Tulsa, Oklahoma 74145
Texaco Inc., P.O. Box 425, Bellaire, Texas 77401
Mobil R&D Corporation, 13777 Midway Road, Dallas, Texas 75244
ARCO Oil & Gas Company, 1601 Bryan Street, Dallas, Texas 75201
Marathon Oil Company, P.O. Box 269, Littleton, Colorado 80160
Chevron Research and Technology Company, P.O. Box 1627, Richmond, California 94802–0627

The nature and objective of this project is to produce a report which thoroughly addresses the safety, practicality and economics of scrap metal recycling as an option for the environmentally sound disposition of production and transport oil and gas equipment contaminated with naturally occurring radioactive materials ("NORM"). Participation in this project will remain open until the completion date of the project. The parties intend to file additional written notifications disclosing all changes in the membership and scope of this project. Information regarding participation in this project may be obtained from Mr.

B.J. Williams, P.O. Box 1267, Ponca City, Oklahoma 74603.

Joseph H. Widmar,

Director Operations, Antitrust Division.

[FR Doc. 91-21053 Filed 9-3-91; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91-77)]

NASA Advisory Council; Renewal

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of renewal.

SUMMARY: Pursuant to section 14(b)(1) of the Federal Advisory Committee Act, Public Law 92-463, and after consultation with the Committee Management Secretariat, General Services Administration, the National Aeronautics and Space Administration has determined that renewal of the following NASA advisory committees is in each case in the public interest in connection with the performance of duties imposed upon NASA by law: the NASA Advisory Council (NAC); the NAC Aeronautics Advisory Committee; the NAC Aeronautics Advisory Committee, Subcommittee on Aviation Safety Reporting System; the NAC Aerospace Medicine Advisory Committee; the NAC Commercial Programs Advisory Committee; the NAC History Advisory Committee; the NAC Space Science and Applications Advisory Committee; the NAC Space Station Advisory Committee; and the NAC Space Systems and Technology Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, National Aeronautics and Space Administration, Code ADA-2, Washington, DC 20546 (202/453-8766).

SUPPLEMENTARY INFORMATION: The function of the Council is to consult with and advise the NASA Administrator or designee with respect to plans for, work in progress on, and accomplishments of NASA's aeronautics and space programs.

Dated: August 28, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-21145 Filed 9-3-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was established by a Joint Statement between the President and the Nation's governors dated July 31, 1990. The panel will determine how to measure and monitor progress toward achieving the national education goals and report to the nation on the progress toward the goals. Members of the National Education Goals Panel are six governors appointed by the Chairman of the National Governor's Association, four senior Administration officials, and four Congressional leaders. Governor Roy Romer of Colorado is the initial chairman.

TENTATIVE AGENDA ITEMS: The tentative agenda for the meeting includes a discussion relating to the first report of the National Education Goals.

DATE: The ninth meeting is scheduled for Wednesday, September 4, 1991, 3-5 p.m.

ADDRESS: The Grand Hyatt, 1000 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Pat Forgione at the National Education Goals Panel Office to indicate attendance and for further information. The phone number is (202) 632-0952.

Dated: August 28, 1991.

Jim Pinkertons,

Deputy Assistant to the President for Economic and Domestic Policy.

[FR Doc. 91-21300 Filed 8-30-91; 3:45 pm]

BILLING CODE 3127-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological and Critical Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Biological and Critical Systems.

Date & Time: September 24, 1991, 8:30 a.m.-5 p.m.

Location: National Science Foundation, 1800 G Street, NW., room 523, Washington, DC 20550.

Type of Meeting: Closed.

Agenda: Review and evaluate research Small Business Innovative Research proposals.

Contact person: Dr. Fred G. Heineken, Program Director, room 1132, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9666.

Dated: August 28, 1991.

Herman G. Fleming,

Committee Management Officer.

[FR Doc. 91-21114 Filed 9-3-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Chemical and Thermal Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review an evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Chemical and Thermal Systems.

Date & Time: September 23, 1991, 8:30 a.m.-5 p.m.

Location: National Science Foundation, 1800 G Street, NW, room 1243, Washington, DC 20550.

Type of Meeting: Closed.

Agency: Review and evaluate research Small Business Innovative Research proposals.

Contact Person. Dr. Robert Wellek, Program Director, room 1115, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9606.

Dated: August 28, 1991.

Herman G. Fleming,

Committee Management Office.

[FR Doc. 91–21120 Filed 9–13–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemical and Thermal Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the national Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review an evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Chemical and Thermal Systems.

Date & Time: September 20, 1991, 8:30 a.m.–5 p.m.

Location: National Science Foundation, 1800 G Street, NW., room 540B, Washington, DC 20550.

Type of Meeting: Closed.

Agenda: Review and evaluate research Small Business Innovative Research proposals.

Contact Person: Dr. M.C. Roco or Dr. Stephen Traugott, Program Directors, room 1115, National Science Foundation, Washington, DC 20550 Telephone (202) 357–9606.

Dated: August 28, 1991.

Herman G. Fleming,

Committee Management Officer.

[FR Doc. 91–21121 Filed 9–3–91; 8:45 am]

BILLING CODE 7555–01–M

Continental Dynamics Review Panel; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Continental Dynamics Proposal Review Panel.

Date: September 25–27, 1991.

Time: 9 a.m. to 5 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Agenda: Review and evaluate proposals for the Continental Dynamics Program.

Contact: Dr. Leonard E. Johnson, Program Director, Continental Dynamics Program, National Science Foundation, room 602, Washington, DC 20550, Telephone (202) 357–7721.

Dated: August 28, 1991.

Herman G. Fleming,

Committee Management Officer.

[FR Doc. 91–21117 Filed 9–3–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Earth Sciences; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review an evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information ; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Earth Sciences.

Dates & Times: September 26–27, 1991, 8:30 a.m.–5 p.m. daily.

Location: Wyndam Bristol Hotel (Executive Board Room) 2430 Pennsylvania Avenue NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate proposals for the Instrumentation and Facilities Program.

Contact Person: Dr. Daniel F. Weill, Program Director, Instrumentation and Facilities Program, National Science Foundation, room 602, Washington, DC 20550, Telephone (202) 357–7807.

Dated: August 28, 1991.

Herman G. Fleming,

Committee Management Officer.

[FR Doc. 91–21124 Filed 9–3–91; 8:45 am]

BILLING CODE 7555–01–M

Earth Sciences Proposal Review Panel; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Earth Sciences Proposal Review Panel.

Date: September 23, 1991.

Time: 8 a.m. to 6 p.m.

Place: Room 536, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Contact: Dr. John Maccini, Program Director, Division of Earth Sciences, room 602, National Science Foundation, Washington, DC, Telephone (202) 357–7866.

Dated: August 28, 1991.

Herman G. Fleming,

Committee Management Officer.

[FR Doc. 91–21126 Filed 9–3–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Earth Sciences; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical

information, financial data, such as salaries, and personal information concerning individuals associated with proposals, the meetings are closed to be public. These matters are within exemptions (4) and (6) of 5 U.S.C, 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Earth Sciences.
Date: September 18, 1991.
Time: 8:30 a.m. to 5 p.m.
Place: Room 523, National Science Foundation, 1800 G Street NW., Washington, DC.
Type of Meeting: Closed.
Agenda: Review and evaluate proposals for the Small Business Innovation Research Program.
Contact: Dr. Arnold Silverman, Program Director, Education and Human Resources or Dr. Herman Roberson, Program Director, Instrumentation and Facilities Program, National Science Foundation, room 602, Washington, DC 20550, Telephone (202) 357–7807.

Dated: August 28, 1991.

Herman G. Fleming,

Committee Management Officer.

[FR Doc. 91–21127 Filed 9–3–91; 8:45 am]

BILLING CODE 75550-01-M

Special Emphasis Panel in Industrial Science and Technological Innovation; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review an evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Industrial Science and Technological Innovation.
Date & Time: September 20, 1991 8:30 a.m.–5 p.m.
Location: National Science Foundation, 1800 G Street NW., room 1250, Washington, DC 20550.
Type of Meeting: Closed.
Agenda: Review and evaluate research Small Business Innovative Research proposals.
Contact Person: Ritchie B. Coryell, Program Manager, room 1250, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7527.

Dated: August 28, 1991.

Herman G. Fleming,

Committee Management Officer.

[FR Doc. 21119 Filed 9–3–91; 8:45 am]

BILLING CODE 7555-01-M

Instrumentation & Facilities Review Panel; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Instrumentation & Facilities Proposal Review Panel.
Date: September 26–27, 1991.
Time: 8:30 a.m. to 5 p.m.
Place: Wyndam Bristol Hotel (Executive Board Room) 2430 Pennsylvania Avenue NW., Washington, DC.
Type of Meeting: Closed.
Agenda: Review and evaluate proposals for the Instrumentation and Facilities Program.
Contact: Dr. Daniel F. Weill, Program Director, Instrumentation and Facilities Program, National Science Foundation, room 602, Washington, DC 20550, Telephone (202) 357–7807.

Dated: August 28, 1991.

Herman G. Fleming,

Committee Management Officer.

[FR Doc. 91–2123 Filed 9–3–91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Mechanical and Structural Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Mechanical and Structural Systems.
Date & Time: September 23, 1991 9 a.m.–5 p.m.
Location: National Science Foundation, 1800 G Street NW., room 523, Washington, DC 20550.
Type of Meeting: Closed.
Agenda: Review and evaluate research Small Business Innovative Research proposals.
Contact Person: Dr. Larsen-Basse, Program Director, room 1108, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9542.

Dated: August 28, 1991.

Herman G. Fleming,

Committee Management Officer.

[FR Doc. 91–21125 Filed 9–3–91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Mechanical and Structural Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Mechanical and Structural Systems.
Date & Time: September 25, 1991 8:30 a.m.–5 p.m.
Location: National Science Foundation, 1800 G Street NW., room 540B, Washington, DC 20550.
Type of Meeting: Closed.
Agenda: Review and evaluate research Small Business Innovative Research proposals.
Contact Person: Dr. Elbert L. Marsh, Program Director, room 1108, National Science Foundation, Washington, DC 20550. Telephone (202) 357–9542.

Dated: August 28, 1991.

Herman G. Fleming,

Committee Management Officer.

[FR Doc. 91-21128 Filed 9-3-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Microelectronics Information Processing Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review an evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Microelectronics Information Processing Systems.

Date & Time: September 20, 1991 8:30 a.m.-5 p.m.

Location: National Science Foundation, 1800 G Street NW., room 414, Washington, DC 20550.

Type of Meeting: Closed.

Agenda: Review and evaluate research Small Business Innovative Research proposals.

Contact Person: Dr. Robert B. Grafton, Program Director, room 414, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7853.

Dated: August 28, 1991.

Herman G. Fleming,

Committee Management Officer.

[FR Doc. 91-21115 Filed 9-3-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Molecular Biosciences; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review an evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Molecular Biosciences

Date & Time: September 23, 1991 8:30 a.m.-5 p.m.

Location: National Science Foundation, 1800 G Street NW., room 1242, Washington, DC 20550.

Type of Meeting: Closed.

Agenda: Review and evaluate research Small Business Innovative Research proposals.

Contact Person: Dr. Brenda Flam, Program Manager for Special Projects, room 325, National Science Foundation, Washington, DC 20550, telephone (202) 357-9400.

Dated: August 28, 1991.

Herman G. Fleming,

Committee Management Officer.

[FR Doc. 91-21118 Filed 9-3-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Physics; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Physics.

Date & Time: September 19, 1991 8:30 a.m.-5 p.m.

Location: National Science Foundation, 1800 G Street NW., room 341K, Washington, DC 20550.

Type of Meeting: Closed.

Agenda: Review and evaluate research Small Business Innovative Research proposals.

Contact Person: Dr. Rolf Sinclair, Program Director, room 341, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7996.

Dated: August 28, 1991.

Herman G. Fleming,

Committee Mangement Officer.

[FR Doc. 91-21116 Filed 9-3-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Polar Program; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Polar Program.

Date & Time: September 27, 1991 9:30 a.m.-4 p.m.

Location: National Science Foundation, 1800 G street NW., room 1242, Washington, DC 20550.

Type of Meeting: Closed.

Agenda: Review and evaluate research Small Business Innovative Research proposals.

Contact Person: Dr. Charles Myers, Polar Coordination Specialist, room 627, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7817.

Dated: August 28, 1991.

Herman G. Fleming,

Committee Management Officer.

[FR Doc. 91-21122 Filed 9-3-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 12, 1991 through August 22, 1991. The last biweekly notice was published on August 21, 1991 (56 FR 41574).

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 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 4, 1991, 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 request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition 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 amendment 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 request 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 in the **Federal Register** 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 20555, 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 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 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: June 7, 1991

Description of amendment requests: The proposed amendments to the Technical Specification for Palo Verde Nuclear Generating Station (PVNGS) Units 1, 2, and 3 would incorporate the recommendations of Generic Letter 90-06, "Resolution of Generic Issue 70, Power-Operated Relief Valve and Block Valve Reliability," and Generic Issue 94, "Additional Low-Temperature Overpressure Protection for Light-Water Reactors, Pursuant to 10 CFR 50.54(f)." The proposed amendments reduce the allowed out-of-service time for shutdown cooling system (SCS) suction relief valves and add new ACTION Statements for SCS suction relief valve inoperability. The proposed amendments would also verify that the Reactor Coolant System (RCS) is properly vented and clarify the associated Surveillance Requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided the following analysis of the no significant hazards consideration issue:

Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments 1) reduce the allowed out of service time for the SCS suction relief valves; 2) add new ACTION Statements for SCS suction relief valve inoperability; and for periodic verification that the RCS is properly vented, and 3) clarify the associated Surveillance Requirements. These changes to the Technical Specifications provide increased reliability for the low temperature overpressure protection relief valves which will reduce the probability of a low temperature overpressurization event. The consequences of a low temperature overpressurization event are unchanged. Therefore, the proposed amendments do 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.

The proposed amendments limit the period of time that an individual low temperature overpressure protection relief valve may be out of service before compensatory action is initiated, thereby reducing the possibility of a low temperature overpressurization event. The proposed amendments do not modify the design or operation of plant equipment. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Involve a significant reduction in a margin of safety.

The proposed amendments ensure that the low temperature overpressure protection system has appropriate compensatory measures implemented in a more timely manner whenever an individual SCS valve is inoperable. These changes represent an additional operating limitation, but do not change the bases or assumptions used in the safety analyses for this system. Therefore, the proposed amendments will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Arthur C. Gehr, Esq., Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85073

NRC Project Director: James E. Dyer

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: June 25, 1991

Description of amendment requests: The Iodine Removal System uses hydrazine as an additive to the containment spray system at Palo Verde, Units 1, 2, and 3. The amendment requests would delete the Iodine Removal System from Technical Specifications 3/4 3.6.2.2 for Units 1, 2, and 3. The amendment requests and supporting analysis appear to demonstrate that the removal of hydrazine additive from the containment spray system will not result in a significant increase in post-Loss of Coolant Accident (LOCA) doses outside of containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability or consequences of an accident previously evaluated will not be increased by the proposed Technical Specification amendment. The IR System is used only to mitigate the consequences of a LBLOCA. Deletion of this system will not increase the probability of occurrence of an accident since the system only operates to mitigate an accident. The doses have been recalculated and are still well below regulatory limits. Thyroid doses for the Control Room, Exclusion Area Boundary (EAB) and Low Population Zone (LPZ) have been significantly reduced. The slight increases in the whole body and beta skin doses in the Control Room, EAB and LPZ are well below 10 CFR 50, Appendix A, (GDC 19), and 10 CFR 100 limits. As discussed in Attachment 2, the increases in beta skin doses and whole body doses is due primarily to a refinement in the computer program (LOCADOSE), which now considers daughter products and refinement of the containment model to three regions (main sprayed region, auxiliary sprayed region, and unsprayed region) rather than two (sprayed region, and unsprayed region).

The equipment necessary for post-LOCA operation will still function in the environment without hydrazine. The radiation environment in containment is affected by deletion of the IR System. Using the guidance in Revision 2 of SRP 6.5.2, a larger fraction of the radioiodines will plate-out on containment surfaces, increasing the contribution from plate-out to equipment qualification doses. An analysis was performed to quantify the changes to equipment doses resulting from deletion of the IR System (Attachment 2, Reference 27). The radiological impact on equipment is within the parameters of the environmental qualification boundaries and is documented in documented in Engineering Study 13-NS-A25, Rev. 0. The long term pH of the sump is maintained by the trisodium phosphate (TSP) in the lower level of the containment building. Deletion of the IR System does not affect the long term pH control provided by the TSP, therefore, the equipment remains qualified for the resulting pH. The hydrogen generation in containment post-LOCA is also dependent upon pH; however, as this factor is not affected, hydrogen generation will remain unchanged.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification amendment will not introduce any new operational conditions or any new accidents not previously analyzed. The IR System is designed to operate only to mitigate the consequences of a LBLOCA and is not an event initiator. Deleting the system will not affect the CSS. The CSS pumps will continue to have sufficient net positive suction head (NPSH) without the addition of hydrazine to perform their function. The containment spray risers, headers and nozzles will fill as before and perform their intended function. There will be no additional operational requirements for either the CSS nor the passive TSP. The IR System equipment will be taken out of service, and no modifications will be required to the CSS or the TSP baskets. These components will continue to perform their accident mitigation functions in the same manner. The TSP baskets are a passive system for raising the pH in the containment sump.

Neither the CSS or the TSP is used during normal plant operation. Therefore, the deletion of the IR System will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification amendment will not reduce the margin of safety. Thyroid doses for the Control Room, EAB, and LPZ have been reduced. Post-LOCA whole body and beta skin doses increase only slightly and remain will within regulatory limits. The major contributor to the increase in the doses is due to the fact that the computer program (LOCADOSE) used, now considers daughter products whereas the original analysis used an earlier version of (LOCADOSE) which did not consider daughter products. Additionally, the containment model was changed from a two region model (sprayed and unsprayed) to a three region model (main sprayed, auxiliary sprayed and unsprayed).

There will be no additional operational requirements for either the CSS or the passive TSP addition. These components will continue to perform their accident mitigation functions in the same manner. Neither the CSS nor the TSP is used during normal plant operation. Therefore, the deletion of the IR System will not reduce the margin of safety. The proposed amendment is consistent with the current regulatory guidance for fission product removal from the post accident containment environment.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Arthur C. Gehr, Esq., Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85073

NRC Project Director: James E. Dyer

Carolina Power & Light Company, et al., Docket No. 50-325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of amendment request: August 22, 1991

Description of amendment request: The proposed amendment would revise Technical Specification 3.8.1.1, Actions b.3, c.3, and e.3 to allow a one-time only extension of the allowed out-of-service times for diesel generators number three and four from 7 days to 14 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Carolina Power & Light Company has determined that a one-time-extension of the 7 day AOT [allowed outage time] for one inoperable diesel generator will not have an unacceptable effect on the overall safety of the plant. The core damage probability for a 14 day AOT is no greater than that which exists for two 7 day AOTs. Based on a probabilistic risk assessment (PRA) performed by CP&L, the increase in overall core damage probability is less than 5E-7 over the second 7 day AOT period. This small increase is deemed acceptable. In fact, the potential exists to complete the maintenance work in two less days that currently scheduled (2 days saved by eliminating the preparatory and restoration time which would be necessary with a second 7 day LCO). This would effectively reduce the total out-of-service-time for Diesel Generators Number 3 and 4, thereby

increasing diesel generator availability and decreasing core damage probability.

However, in the event that the full 14 days is required, the longer effective period available for the performance of maintenance in a 14 day AOT enhances the ability to maximize the amount of maintenance which can be accomplished during the outage, thereby increasing long term diesel generator reliability.

The proposed amendment will not result in the a [sic] significant increase in the probability of the diesel generators failing to perform their intended safety function. Technical Specification 4.8.1.1.2.d.1 requires that each diesel generator shall be demonstrated operable at least once per 18 months during shutdown by subjecting the diesel to an inspection in accordance with procedures prepared in conjunction with its manufacturer's recommendations for this class of standby service. The purpose of the Technical Specification 4.8.1.1.2.d.1 required inspection is to ensure that the diesel generators are functioning properly and to inspect for any potential problems. This is accomplished via a partial tear down of the diesel generator, in accordance with Brunswick Plant Procedure OMST-DG500, which will be performed for Diesel Generators Number 3 and 4 during the 14 day AOT period requested by this proposed amendment. This procedure takes approximately six days to complete and is accomplished in five parts. The first part consists of a review of oil and water analyses, periodic tests, and work orders, completed during the surveillance interval, to determine if there are any particular areas developing trends that may require additional investigation. Parts 2 and 3 consist of inspections and preventive measures recommended by the diesel manufacturer plus any checks that may be advised based on Part 1 investigations. This work includes investigation of the camshaft bearings since the camshaft bearings have smaller clearances and closer tolerances than the main or rod bearings and would be more likely to show degradation. Part 4 consists of system checks and maintenance engine testing of the auxiliary lube oil pump, the motor driven fuel oil pump, the motor driven jacket water pump, and the engine to determine if the diesel generator is ready to be tested for operability. Finally, Part 5 is a final operability test of the diesel while running.

The net effect of performing these maintenance activities in addition to performing the expanded inspections and maintenance for Diesel Generators Number 3 and 4 will be an increase in overall diesel generator reliability and a higher assurance that the diesel generators are functioning properly. This increased scope will provide CP&L with a more comprehensive data base for determining overall condition of the diesel generators.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment only extends the 7 day AOT for one inoperable diesel generator to a 14 day AOT for one inoperable diesel generator. There is no change to the plant or its manner of operation. The proposed amendment does not change the design, materials or construction standards applicable to Diesel Generators Number 3 and 4 criteria. Therefore, the proposed change cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. Allowance of a 14 day AOT for one inoperable diesel generator for Diesel Generators Number 3 and 4 will not reduce the margin of safety to any greater extent that two 7 day AOTs. The extended AOT will allow for more comprehensive maintenance, thereby increasing long term diesel generator reliability and a long term increase in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: July 26, 1991

Description of amendment request: The proposed amendment revises Technical Specification (TS) 3/4.6.3, Containment Isolation Valves, by adding a statement to the limiting conditions for operation under the action requirements to the affect that the provisions of TS 3.0.4 do not apply. This change is in accordance with the recommendations and guidance of NRC Generic Letter 91-08, "Removal of Component Lists From Technical Specifications," dated May 6, 1991.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Containment Isolation Valves do not initiate accidents analyzed in Chapter 15 of the Final Safety Analysis Report (FSAR). Further, the containment boundary is not adversely impacted when a penetration is isolated per the action requirements of the Technical Specifications, remains capable of performing its design function, and is fully capable of mitigating an accident. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications do not require any physical changes to the plant. As such, existing Technical Specification requirements and the components to which they apply remain unaltered; and the existing systems continue to perform the same functions which they are currently designed to perform.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The bases of Specification 3.0.4 are met when the action requirements of Specification 3/4.6.3 are complied with, permitting continued operation for an unlimited period of time. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis; and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: June 28, 1991

Description of amendments request: The proposed amendment was submitted as a result of NRC recommendations pertaining to Generic Letter 90-06 for Generic Issue 70, "Power-Operated Relief Valve [PORV] and Block Valve Reliability," and Generic Issue 94, "Additional Low-Temperature Overpressure Protection [LTOP] for Light-Water Reactors." The proposed Technical Specifications will enhance the reliability of PORVs and block valves and will provide additional low-temperature overpressure protection.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

The proposed amendment involves several changes as follows:

To address Generic Issue 70, "Power-Operated Relief Valve and Block Valve Reliability," the licensee proposed the following revisions to Technical Specification 3/4.4.4:

1. Revise Action A to include a specific requirement to maintain power to the block valves associated with a PORV which has been isolated due to excessive seat leakage, and to terminate the cooldown sequence at Mode 4 instead of Mode 5. This is consistent with the Modes 1-3 applicability of the specification, and avoids a potential conflict with the Cold Overpressure Protection Specification, 3/4.4.9.3, which could rely on either the PORVs or residual heat removal (RHR) suction relief valves to comply with the Limiting Condition for Operation (LCO).

2. Action B is being revised to terminate the cooldown requirements at Mode 4, for the reasons noted above.

3. Action C is modified to provide clarity and to terminate cooldown requirements at Mode 4.

4. Action D is modified to allow a PORV to be placed in manual control if its associated block valve is inoperable. It will also require that at least one block valve be returned to operable status within 1 hour if both block valves are inoperable. The 72-hour allowed outage time for one inoperable block valve is retained. The cooldown provisions of this action statement are terminated at Mode 4.

5. Surveillance Requirement 4.4.4.1 is changed to require calibration of the actuation instrumentation, to limit the stroking of the PORVs to Modes 3 or 4, and to incorporate a surveillance for the PORV control system.

6. Editorial clarifications in the LCO wording and the deletion of a footnote which no longer applies.

To address Generic Issue 94, "Additional Low-Temperature Overpressure Protection for Light-Water Reactors," the licensee proposed the following revisions to Technical Specification 3/4.4.9.3:

1. The LCO is rewritten to require any two overpressure mitigation devices when the reactor coolant system (RCS) is not depressurized through a two square inch or larger vent. This is a slight modification of the current LCO, which requires either two PORVs in the Armed Low Temperature mode or two RHR suction relief valves to be operable.

2. With only one overpressure mitigation device operable in Mode 4, the current 7-day allowed outage time is retained. With only one overpressure mitigation device operable in Mode 5 or Mode 6 with the vessel head on, the allowed outage time is reduced to 24 hours.

3. Surveillance Requirement 4.4.9.3.3 is rewritten as an Action Statement because of its conditional nature.

The following analysis of the proposed changes for the evaluation of no significant hazards consideration is in accordance with the standards set forth in 10 CFR 50.92(c).

1. Involve a significant increase in the probability or consequences of an accident previously evaluated

From an accident and transient mitigation standpoint, the PORVs can be utilized to perform several safety-related functions. These include mitigation of a steam generator tube rupture accident, loss of non-emergency AC power, loss of feedwater, and turbine trip. In addition, the PORVs can be an accident initiator in the case where a failed-open PORV results in a small break loss of coolant accident (SBLOCA).

The proposed changes only affect the pressurizer PORVs, block valves, and the PORV actuation circuitry. There is no physical interaction between the subject equipment and the factors that contribute to the affected plant transients listed above. The changes are intended to increase the reliability and availability of the PORVs, and are expected to result in an overall increase in the protection of public health and safety.

For the case where PORVs are utilized as a means of LTOP, the proposed changes are designed to limit the amount of time the plant is vulnerable to a potentially damaging low temperature overpressurization transient (e.g., only one overpressure mitigation device is operable in Mode 5, or Mode 6 with vessel head on). The changes do not alter the manner in which the equipment is maintained or operated, and do not alter the source term, the containment isolation or allowable releases.

Based on the above, the proposed Technical Specification changes will not involve a significant increase in the probability or consequences of an accident that has been previously evaluated.

2. Create the possibility of a new or different kind of accident from an accident previously evaluated

The proposed amendment changes do not introduce new equipment, and installed equipment is not operated in a new or different manner. There are no new failure modes or mechanisms associated with the proposed changes. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in a margin of safety

No change is proposed for the PORV low temperature overpressure protection setpoints or for the RHR suction relief valve setpoints. By limiting the allowable outage time in Modes 5 and 6, for the PORVs and/or RHR suction relief valves, the overall availability of LTOP is enhanced. The other proposed changes will enhance the overall availability and reliability of the PORVs and block valves. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: July 10, 1991

Description of amendments request: The proposed amendment would revise the Technical Specifications (TSs) to provide for the use of VANTAGE 5 fuel, in combination with the present Optimized Fuel Assembly (OFA) core, and ultimately as the entire core, for Zion Station Units 1 and 2. The proposed amendment also provides a revision to the licensee's previous submittal to remove cycle-specific parameter limits from the TSs and relocate them to a Core Operating Limits Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Based on the NRC-approved Westinghouse document, WCAP-10444-P-A, "VANTAGE5 Fuel Assembly Reference Core Report", and Commonwealth Edison Company's review of the VANTAGE5 documentation provided by Westinghouse in support of the VANTAGE5 safety evaluation, Commonwealth Edison Company has determined that the proposed amendment to the operating licenses for Zion Nuclear Generating Station, Units 1 and 2 involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

The following evaluation is provided for the three categories of the significant hazards consideration standards:

1. The proposed Technical Specification and Operating License changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The Westinghouse VANTAGE5 reload fuel assemblies are mechanically compatible with the existing OFA fuel assemblies, control rods, and reactor internals interfaces. Based on tests conducted on 17x17 low pressure drop grids considering flow redistribution effects of IFMs, it is expected that fuel rod wear will be within the allowable design limits for a core configured with both 15x15 OFA and VANTAGE5 fuel assemblies. Full assembly testing will be performed to verify rod wear criteria are met prior to introducing a full region of VANTAGE5 fuel into the core. The VANTAGE5 and OFA fuel assemblies satisfy the safety and design criteria which form the licensing basis for Zion Station. The safety analysis necessary to support the transition to and implementation of a full core of VANTAGE5 fuel was performed and found to be acceptable and consistent with the Zion Station design basis. Positive MTC was evaluated as part of the VANTAGE5 LOCA and non-LOCA safety analyses and was found to be acceptable. Additionally, positive MTC will be evaluated by application of WCAP-11992, Joint Westinghouse Owners Group/Westinghouse Program: ATWS Rule Administration Process, to ensure the results are acceptable. Further, the reload VANTAGE5 fuel assemblies are hydraulically compatible with the OFA fuel assemblies from the previous core based on hydraulic testing of similar fuel designs. Fuel assembly hydraulic testing similar to that performed as part of WCAP-10444 will be conducted to confirm the calculated hydraulic characteristics of the 15x15 VANTAGE5 fuel with IFMs. A supplemental report will be provided for NRC Staff review prior to implementing VANTAGE5 fuel with IFMs. Reload fuel designs utilizing IFMs are currently not planned to be implemented until early late 1993.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation is unchanged. The use of the VANTAGE5 fuel does not impact the safe operation of Zion Units 1 or 2 in that the existing and proposed safety limits will be satisfied.

These limits involve no system additions or physical modifications to systems in the station, other than the VANTAGE5 fuel upgrade. Currently installed equipment will not be operated in a manner different from previous operation, except that technical data and setpoints may be changed. Since the operational methods remain unchanged and the operating parameters have been evaluated to maintain the station within existing design basis criteria, no different type of failure or accident is created.

3. The proposed change does not involve a significant reduction in a margin of safety. In a mixed core of OFA and VANTAGE5 assemblies (with IFMs), the IFM grids in the VANTAGE5 assemblies result in a localized flow redistribution between adjacent VANTAGE5 and OFA assemblies. The effect of this localized flow redistribution is bounded by applying conservative penalties to the transition core DNB and Large Break LOCA PCT results calculated in the analysis of a complete VANTAGE5 fueled core. The overall core hydraulic resistance with the IFM grids does not result in an increase in the control rod drop time. This will be further assured by the VANTAGE5 hydraulic testing. The effects of a mixed OFA and VANTAGE5 core and a complete VANTAGE5 core have been evaluated in the LOCA and non-LOCA analyses and the acceptance criteria for these postulated accidents have been met. The margin of safety will be maintained in adhering to the operating parameters specified in the Technical Specifications. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Commonwealth Edison Company has evaluated the proposed changes associated with the Core Operating Limits Reports and determined that they involve no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. Involve a significant reduction in a margin of safety.

1. The proposed Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The removal of the cycle-specific core operating limits from the Zion Station Technical Specifications has no influence or impact on the probability or consequences of an accident previously evaluated. The cycle-specific core operation limits, although not in Technical Specifications, will be followed in the operation of the Zion Station. The proposed amendment still requires exactly the same actions to be taken when or if limits are exceeded as is required by current Technical Specifications. The cycle-specific limits within the COLR will be implemented and controlled per Zion procedures. Each accident analysis addressed in the Zion Final Safety Analysis Report (FSAR) will be examined with respect to changes in cycle dependent parameters, which are obtained from application of the NRC approved reload design methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analysis. This examination, which will be performed per the requirements of 10 CFR 50.59, ensures that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated. Since this examination will be performed per the requirements of 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The removal of the cycle specific variables has no influence or impact, nor does it contribute in any way to the probability or consequences of an accident. No safety related equipment, safety function, or plant operations will be altered as a result of this proposed change. The cycle specific variables are calculated using the NRC approved methods and submitted to the NRC to allow the Staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken, when or if limits are exceeded.

Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is not affected by the removal of cycle specific core operating limits from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remains unchanged. Appropriate measures exist to control the values of these cycle specific limits. The proposed amendment continues to require operation within the core limits as obtained from the NRC approved reload design methodologies and appropriate actions to be taken, when or if limits are exceeded.

The development of the limits for future reloads will continue to conform to those methods described in the NRC approved documentation. In addition, each future reload will involve a 10 CFR 50.59 safety review to assure that operation of the unit within the cycle specific limits will not involve a significant reduction in a margin of safety. Since each future reload will involve a 10 CFR 50.59 safety review, no reduction

(significant or insignificant) in a margin of safety will be allowed.

Therefore, the proposed changes are administrative in nature and do not impact the operation of the Zion Station in a manner that involves a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: August 13, 1991

Description of amendment request: Connecticut Yankee Atomic Power Company has proposed a one time exception to the Technical Specifications to allow temporary cooling of the operable emergency diesel generator using alternative means while service water system modifications are performed during the upcoming refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a signficant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes temporarily redefine operability of the required [emergency diesel generator] EDG to include reliance on temporary firehoses for service water cooling. This temporary cooling would be provided by two 3" firehoses, in parallel, for a maximum of 14 consecutive days during the Cycle 16 refueling outage.

The firehoses used to provide temporary cooling to the "A" EDG are not seismically qualified pipes. As such, for design basis purposes, it is assumed that there is a reduction in the integrity of the cooling medium and thus a reduction in reliability of the EDG. However, given the flexible nature of the hoses, it is projected that the firehose would maintain its integrity during a seismic event. Furthermore, the likelihood of a seismic event and a demand for the EDG occurring during the period of piping modifications is very small.

Given the flexibility and the location of the firehoses (hung from the ceiling inside the turbine hall), it is projected that the structural integrity and reliability of the service water cooling to the "A" EDG will not be significantly reduced. Also, the temporary cooling arrangements will be implemented (as outlined) to ensure that sufficient cooling flow is provided to the "A" EDG.

Based on the evaluation, it is concluded that the change does not adversely affect the consequences of the design basis accidents. Therefore, it is concluded that previously analyzed accidents are not affected. In addition, there is no significant increase in the probability of failure of a safety system. As such, CYAPCO has concluded that there is no significant increase in the probability or consequences of any accidents previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. There is no impact on plant response to the point where it can be considered a new accident, and no new failure modes are introduced. The redefinition of operability for EDG cooling for a maximum of 14 days during the Cycle 16 refueling outage is considered an insignificant change in the way the plant is operated. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The reduction in service water cooling integrity based on the 14-day maximum reliance on the parallel firehoses is judged to be very small. The proposed Technical Specification changes have little, if any, adverse impact on the protective boundaries. Since the proposed change also does not affect the consequences of any accident previously analyzed, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: August 8, 1991

Description of amendment request: The proposed amendments would revise the visual inspection requirements for snubbers in Technical Specification 3/4.7.8 in response to the guidance provided in Generic Letter 90-09 "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed amendment would incorporate the guidance contained in the NRC's Generic Letter 90-09, dated December 11, 1990. The Generic Letter provided guidance for replacing the current snubber visual inspection schedule with an alternate snubber visual inspection schedule which maintains the same confidence level.

This proposed amendment has been developed based on the Generic Letter guidance.

* * * * *

The proposed amendment does not involve an increase in the probability or consequences of any previously evaluated accident. This amendment provides an alternate schedule for the visual inspection of snubbers which maintains the same confidence level in the snubbers ability to operate within a specified acceptance level. The accident analyses are therefore unaffected by this proposal.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated since the snubbers ability to operate within a specified acceptance level has not been changed.

The proposed amendment does not involve a significant reduction in a margin of safety. This amendment provides an alternate schedule for the visual inspection of snubbers which maintains the same confidence level in the snubbers ability to operate within a specified acceptance level. The margin safety is therefore unaffected by this proposal.

For the above reasons, Duke Power concludes that this proposed amendment does not involve any Significant Hazards Consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 30, 1991

Description of amendment request: The proposed amendment requests 1) an increase in the allowed outage time for the drywell and containment hydrogen concentration analyzers and monitors, 2) increases the time limit for reporting certain inoperable accident radiation monitors, and 3) revises the technical speciifcation ACTIONs for accident monitoring instrumentation in Table 3.3.7.5-1 to be consistent with the guidance provided in NRC Generic Letter 83-36.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The malfunction or misoperation of the instrumentation affected by the proposed change is not considered to be an initiating event in any accidents evaluated in the UFSAR. The instrumentation serves only as a source of information for the operator following a postulated accident. The analyses do not rely upon operator actions in lieu of automatic safety system actuation during the first ten minutes of any accident and no credit is taken in the analyses for post accident instrumentation. Although operator actions are relied upon to mitigate degradation of containment due to hydrogren concentration, approved Emergency Operating Procedures are currently in use which give specific guidance in the event the H Monitors are not available. Compliance with the proposed ACTIONs of the TS provides adequate compensatory measures (e.g. Post Accident Sampling System (PASS) samples, grab samples) given the role of the systems in the overall safety of the plant.

The proposed change, therefore, does not significantly increase the probability or consequences of an accident previously evaluated.

b. The change would not create the possibility of a new or different kind of accident from any previously analyzed.

The affected instruments provide monitoring capability only. No new modes of plant operations are introduced by the proposed changes. The existing instrumentation will remain available to provide operators information.

Therefore, the requested change will not create the possibility of a new or different kind of accident from those previously analyzed.

c. This change would not involve a significant reduction in the margin of safety.

The Emergency Procedure, which addresses hydrogen control, gives guidance in the event the H monitors are not available. The procedure references the PASS as a means of obtaining an adequate atmospheric sample of the drywell and containment. Therefore, the proposed change would not affect the ability to obtain an indication of hydrogen concentration.

The proposed changes do not affect the methodology used in the offsite dose analysis nor the acceptance criteria associated with any accident analysis.

Therefore, this change will not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 18, 1991

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) on Control Room Air Conditioning System (CRACS) by separating the current composite requirements of TS 3.7.6 into four TSs covering three separate functions; control room emergency air filteration system (two mode sets), control room air temperature, and control room isolation and pressurization. The changes also increase the allowed outage time to identify and correct breaches to the control room envelope, adds requirements for make-up air flow rate to be used in conjunction with existing differential pressure requirements, and adds toxic gas specifications for Modes 5 and 6. The amendment is related to a revision to the Technical Specification Bases approved by the NRC in a letter dated August 9, 1988. This application dated July 18, 1991, superceeds in full the licensee's previous application dated March 21, 1989, as was noticed in the **Federal Register** on May 3, 1989 (54 FR 18947).

Basis for proposed no significant hazards consideration determination: The proposed change would create new Specifications as follows: 3/4.7.6.1 Emergency Air Filtration, Modes 1-4; 3/4.7.6.2 Emergency Air Filtration, Modes 5 and 6; 3/4.7.6.3 Control Room Air Temperature; 3/4.7.6.4 Control Room Isolation and Pressurization. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The limiting accidents against which the CRACS protects are:

- all Chapter 15 scenarios involving a release of radiation to the environment outside the containment,
- toxic gas releases, and
- smoke resulting from control room envelope fires.

Limiting accidents against which the emergency air filtration system protects are all Chapter 15 scenarios involving release of radiation to the environment outside the containment.

The probability and consequences of any of the limiting accidents listed above are unchanged by the specialization of the plant TSs. As pointed out in the description of the change, TSs 3/4.7.6.1 and 3/4.7.6.2 have retained all requirements from the existing TS with the addition of one action statement based on the inoperability of both trains, and the exception of one action statement based on one inoperable train in Modes 5 or 6. This action statement is unnecessary since it is only applicable in a mode unlikely to experience the limiting design basis accidents against which this system protects. Therefore, the protection of the original specification is uncompromised for the function of emergency air filtration.

There are two differences between the existing TS and the proposed TS 3/4.7.6.3 regarding control room air temperature. The first is the three hour outage allowed when both air conditioning units are inoperable. This corrects most types of failures. Although three hours are less restrictive than TS 3.0.3, it is not significantly less and therefore, does not seriously reduce the protection of the original specification. The other change is the reduction of the surveillance temperature from 110° F to 80° F. This is more restrictive than the existing version. All other requirements for air conditioning are retained in the proposed TS.

Proposed TS 3/4.7.6.4, which concerns control room isolation and pressurization, allows more limited continued plant operation than the existing TS. When compared to existing actions required for continued operation with a known breach, the proposed specification recognizes the potential consequences that could arise from operation with an unidentified breach in the

envelope and imposes more restrictive actions.

Engineering analysis also shows that, for most of the time, toxic chemical concentrations in the control room envelope after a postulated release are largely the result of in-leakage from the RAB [reactor auxiliary building] after isolation. This has the effect of reducing the chemical concentration of gas leaking into the control room by at least an order of magnitude and ultimately results in a control room chemical concentration buildup rate slower than previously assumed. These characteristics make it likely that the operators would have sufficient time to don the breathing apparatus installed in the control room. It is also noteworthy that this emergency breathing apparatus is considered by Regulatory Guide 1.78 to provide sufficient operator protection for those cases where chemical toxicity limits might be exceeded.

The limited continued operation allowed by the proposed change, the design characteristics of the control room, and the installed breathing apparatus provides a reasonable level of protection for plant personnel. Some new restrictions are identified for the control room isolation and pressurization. These were not previously identified and therefore offer enhanced protection to the TS. All existing requirements specific to the isolation and pressurization function are retained in the proposed version. As such, the proposed specification offers more protection than the existing TS.

Based on the above, these revisions to the TS will not adversely affect the reliability or performance of any installed equipment. There are no design changes associated with this proposed amendment. Consequently, all aspects of the safety analysis will remain unchanged and there will be no physical change to the facility, and operation of Waterford 3 in accordance with these proposed changes will not involve a significant increase in the probability or consequence of any accident previously evaluated.

To create a new or different kind of accident, these changes must introduce a new failure path. In this regard, these revisions are benign since they do not alter the system or its operation. With a few exceptions, all existing TS restrictions have been retained. The exceptions have been shown to have insignificant impact. Futhermore, several additional restrictions, not in the existing specification, have been added.

Based on the above information, these changes do not introduce a new failure path and therefore, cannot create a new, unevaluated sequence of events. The current plant safety analyses are bounding and this revision will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Safety margins related to the control room envelope air systems are established for control room temperature and the habitability of the control room following all credible accidents. This change does not modify the equipment installed in the plant or its operation Therefore, existing margins of safety are retained, and the operation of Waterford 3 in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N. S. Reynolds, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 18, 1991

Description of amendment request: The proposed Technical Specification (TS) changes include revision of Section 3.2.D.2, "Reactor Building Isolation and Standby Gas Treatment Initiation", to reflect a planned design change which would add two radiation monitoring channels to the existing two channels, clarification of secondary containment and Standby Gas Treatment System requirements and several editorial corrections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The enclosed Technical Specifications change is judged to involve no significant hazards based on the following:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation

The addition of two channels to the Reactor Building Isolation Ventilation Radiation Monitoring System will not involve a significant increase in the probability or consequences of an accident previously evaluated. This modification will change the Reactor Building Isolation logic from a one-out-of-two to a one-out-of-two-taken-twice logic. This design change provides other safety as well as operational benefits.

The change in logic will enable plant personnel to perform surveillance testing on individual channels without first installing bypassess. With the existing configuration, plant personnel must, during testing, bypass the channel being tested to prevent Reactor Building isolation and Standby Gas Treatment initiation during that testing. Changing the logic design to a one-out-of-two-taken-twice scheme will enable plant personnel to test individual channels in this system without installing bypassess. This will eliminate the potential for inadvertent trip of the system during installation of the bypasses, as well as eliminate the improbable, but potential risk associated with defeat of individual channel operability through inadvertent failure to remove the bypass following surveillance testing.

Additionally, changing the logic to a one-out-of-two-taken-twice scheme will reduce unnecessary challenges to the safety systems by significantly reducing the potential for spurious actuations. This logic scheme is consistent with the logic scheme for CNS Reactor Protection System and provides an optimum compromise between reliability, testability, and freedom from spurious actuations.

The improvements proposed to clarify the operability requirements for the Reactor Building isolation and Standby Gas Treatment initiation and to make the miscellaneous editorial changes will not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes proposed are administrative in nature or are more restrictive than the current Technical Specifications, do not reflect any changes to the plant configuration or the plant safety analysis, and are proposed to provide clarification to station operators.

2. Does the change create the possibility for a new or different kind of accident from any accident previously evaluated?

Evaluation

The changes proposed herein will not create the possibility for a new or different kind of accident from any accident previously evaluated. As discussed above, the only changes proposed resulting from planned plant modifications are those associated with the improvement in the Reactor Building Isolation Ventilation Radiation Monitoring System logic design. This change involves enhancements to the existing design in that the new configuration will provide excellent actuation reliability and improved operational characteristics i.e., less potential for spurious actuations and inadvertent bypass. Therefore, since the District is not proposing changes to the Reactor Building Isolation Ventilation Radiation Monitoring System design function, but instead, enhancing fulfillment of that function through an improved design, the possibility for a new or different kind of accident is not created.

In addition, since the changes proposed to clarify the operability requirements for the Reactor Building isolation and Standby Gas Treatment System initiation functions, and to make the miscellaneous editorial changes involve no hardware changes or new mode of plant operation, no possibility for a new or different kind of accident is created.

3. Does the proposed change create a significant reduction in the margin of safety?

Evaluation

The changes proposed to reflect a planned design change to improve the logic scheme for the Reactor Building Isolation Ventilation Radiation Monitoring System do not constitute a significant reduction in the

margin of safety. The planned design change to a one-out-of-two-taken-twice design is consistent with the design basis for the CNS Reactor Protection System, and has therefore been previously reviewed by and accepted by the NRC in these applications. This logic design is also consistent with the objectives set forth in IEEE 279-1971 for protection systems, and provides an optimum blend of reliability and operability. Therefore, it is the District's determination that this proposed change will not result in a significant reduction in the margin of safety.

For the reasons stated above, the changes proposed to provide operability clarification and make the minor editorial changes do not affect the margin of safety. These changes merely clarify the description of operating conditions and limitations for the associated systems, and do not change the CNS safety analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: Theodore R. Quay

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 29, 1991

Description of amendment request: The requested change extends the plant operating domain on the power-to-flow map above the rated rod line, an envelope referred to as the Extended Load Line Limit (ELLL), and incorporates improvements to the Average Power Range Monitor (APRM) and Rod Block Monitor (RBM) systems to increase plant operating efficiency and instrumentation response and accuracy.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change to the CNS [Cooper Nuclear Station] Technical Specifications to allow operation in the ELLL region and implementation of the ARTS [APRM/RBM Technical Specification] Improvement Program does not involve a significant increase in the probability or consequences of an accident previously evaluated. The ... evaluation demonstrates that the consequences of operational transients, LOCA [loss-of-coolant accident] events, control rod drop accident events, ATWS [anticipated transient without scram] events, and fuel loading error events remain within the acceptance criteria of the licensing basis. The types of fuel authorized for use at CNS have already been analyzed for thermal hydraulic stability and approved for use by plants operating in the ELLL region. Thus, it is concluded that there is no significant increase in the probability of an accident previously evaluated as a result of operation in the ELLL region and implementation of the ARTS Improvement Program.

The miscellaneous administrative changes do not involve a significant increase in the probability or consequences of an accident previously evaluated since they do not affect any plant operations, equipment, or and safety related activity. Thus, these administrative changes cannot affect the probability or consequences of any accident.

The proposed change to Technical Specifications to allow operation in the ELLL region and implementation of the ARTS Improvement Program does not create the possibility for a new or different kind of accident from any accident previously evaluated. As discussed ..., all fuel designs authorized for use at CNS have already been analyzed for thermal hydraulic stability and approved for BWR [boiling water reactor] plants operating in the ELLL region. The design of the proposed modifications to the ARPM and RBM circuit design is of the type that has been proven at other BWR plants. In the analysis of the proposed changes, no changes have been made in the standard fuel design licensing basis limits used in the analysis of reload cores. Therefore, it is concluded that the proposed Technical Specifications change does not create the possibility of any new accident or malfunction.

The miscellaneous administrative changes do not create the possibility of a new or different kind of accident from any accident previously evaluated since these changes are purely administrative and do not affect the plant operation or design. Therefore, these administrative changes cannot create the possibility of any new accident.

The proposed change to Technical Specifications to allow operation in the ELLL region and implementation of the ARTS Improvement Program does not create a significant reduction in the margin of safety. The ... evaluation demonstrates that the consequences of operational transients, LOCA events, control rod drop accidents, ATWS events, and fuel loading errors remain within the acceptance criteria of the licensing basis. The analysis demonstrates that operation in the ELLL region with the proposed APRM and RBM instrument setpoints will not cause any significant increase in offsite radiation doses resulting from any analyzed event. Therefore, the proposed change does not create a significant reduction in the margin of safety.

The miscellaneous administrative changes do not create a significant reduction in the margin of safety since these changes do not affect any safety related activity or equipment. These changes are purely administrative in nature and increase the probability that the Technical Specifications are correctly interpreted by adding clarifying information and correcting errors. Thus, these changes cannot reduce any margin of safety.

The District has evaluated the proposed changes described above against the criteria of 10 CFR 50.92(c) in accordance with the requirements of 10 CFR 50.91(a)(1). This evaluation has determined that the proposed change in Technical Specifications to allow operation in the ELLL region of the power-to-flow map and the implementation ARTS Improvement Program will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility for a new or different kind of accident from any accident previously evaluated, or (3) create a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: Theodore R. Quay

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 5, 1991

Description of amendment request: The amendment would alter Technical Specification 4.6.H Surveillance Requirements and Table 4.6.H to incorporate snubber population size as a factor in determining the time interval between visual inspections of snubbers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation

The performance of snubber visual examinations is a process which complements snubber functional testing to provide added assurance that the snubbers will perform as expected during design basis seismic events. As documented in Generic Letter 90-09, the NRC has determined that the revised visual inspection interval criteria will provide the same snubber operability

confidence level as the existing criteria while providing increased ALARA [as low as reasonably achievable] benefits. Therefore, since the confidence level for snubber operability is not diminished, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

Evaluation

This proposed change will revise the criteria for determining the appropriate inspection interval for the performance of snubber visual inspections. No plant modifications nor new modes of operation will be implemented as a result of this change. Therefore, this proposed change will not create the possibility for a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change create a significant reduction in the margin of safety?

Evaluation

The NRC has found, as documented in Generic Letter 90-09, that the proposed snubber visual inspection interval criteria will provide the same snubber operability confidence level as the existing criteria while reducing radiological exposure to plant personnel. Since the snubber operability confidence level will not be reduced by implementing the revised inspection interval criteria, this proposed change does not create a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: Theodore R. Quay

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 6, 1991

Description of amendment request: The proposed change would revise surveillance requirement acceptance criteria for the High Pressure Injection Pumps and the Low Pressure Injection Pumps (Technical Specifications 4.5.2.a.1.b and 4.5.2.a.2.b respectively) to satisfy the modified accident analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed surveillance requirement for the [high pressure safety injection] HPSI pumps meet the minimum assumption of the plant's accident analysis. Therefore, there is no impact on the accident analysis. However, a resolution of [low pressure safety injection] LPSI pump inconsistency requires both a change to Technical Specifications and evaluation of the safety analysis impact. The impact of these changes on all of the Final Safety Analysis Report (FSAR) Chapter 14 events was considered. The only accidents found to be affected were Large Break Loss of Coolant Accident (LOCA) and Boron Dilution. The impact of the proposed changes on these two accidents is summarized below.

a) Large Break LOCA—The Reactor Coolant System (RCS) pressure drops very rapidly during a large break LOCA. In addition, there is a delay in the start of the LPSI pumps due to the assumed diesel generator starting and sequencing times. The RCS pressure has dropped to about 31 psia by the time that the LPSI pumps are assumed to inject flow. However, the LPSI flows are only reduced from their previous values near the pump's shutoff head. At lower pressures, such as 31 psia and below, the flow is greater than was previously assumed. Thus, the calculated peak clad temperature is not increased as a result of the revision to the LPSI flow curves.

b) Boron Dilution—The LPSI pumps are used to cool the reactor core during Modes 4, 5, and 6. A minimum amount of recirculation flow is required to mix the RCS coolant and prevent too large a step change in reactivity when the dilution flow reaches the core. The minimum required recirculation flow rate to prevent violation of the acceptance criteria for this event is less than the flow available with the revised LPSI curves. Thus, the current boron dilution analysis is still bounding with the revised LPSI flow curves.

Based on the above, the proposed changes do not have any impact on the probability of occurrence or consequences of an accident previously identified.

2) Create the probability of a new or different kind of accident from any previously evaluated.

No new failure modes are introduced as a result of the proposed changes. The changes do not modify plant response to any event. Therefore, the proposed changes do not have any effect on the possibility of creating a new or different kind of accident.

3) Involve a significant reduction in the margin of safety.

There are no hardware modifications associated with these changes. As stated above, there is no increase in the consequences of any design basis accidents. There is no impact on the protective boundaries. The margin of safety is not affected by either the change in the surveillance requirements proposed in this submittal, or by the associated changes to the Bases.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

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 amendment request: June 25, 1991

Description of amendment request: The proposed amendments would revise Technical Specification Section 3.1.A.2.c and Table TS 4.1-2A and the associated Bases in response to Generic Letter 90-06. Generic Letter 90-06 provided NRC staff guidance on Technical Specification changes that should be implemented to improve the reliability of the Pressurizer Power Operated Relief Valves (PORVs) and the availability of the low temperature overpressure protection system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Under certain conditions, the PORVs are used by operators for recovery from postulated accidents such as a steam generator tube rupture. Automatic actuation of the PORVs is needed for low temperature overpressure protection of the reactor coolant system. With the exception of the elimination of the reactor criticality and mode change limitations, all of the proposed changes increase the probability the PORV would be available for these functions.

The proposed change eliminating the PORVs to be operable whenever the reactor is critical will not effect the probability or consequences of an accident. The PORV operability requirements are effectively unchanged by this proposed change, the requirement for the PORVs to be operable

above 310° F is more restrictive and encompasses the reactor critical requirement.

The proposed change eliminating the mode change limitations from the PORV Specification for reactor coolant average temperature greater than or equal to 310° F could potentially impact the response to a postulated accident. However, the deletion of the mode change limitations is consistent with the guidance provided in Generic Letter 90-06. The limitations on the inoperability of the PORVs provided by the respective action statements, and therefore the PORV availability, would be unaffected by the deletion of the mode change limitations. Additionally, since these mode change restrictions were mistakenly incorporated into the Prairie Island Technical Specifications by a recent amendment, they have not been utilized in any accident evaluations and their elimination will not significantly effect the availability of the PORVs to respond to postulated accidents or the consequences of accidents previously evaluated.

The proposed change of maintaining power to closed block valves could potentially increase the probability of an inadvertent opening of a block valve. The safety impact is, however, not significant since the proposed changes are only applicable if the PORV is inoperable due to excessive seat leakage. If the block valve were inadvertently opened only valve leakage would occur, the reactor system would not undergo a rapid depressurization.

Therefore, based on the conclusions of the above discussion, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

There are no new failure modes or mechanisms associated with the proposed changes. The proposed changes do not involve any additional testing or any modification in the operational limits or physical design of the involved systems. The proposed license amendment only involves changes to Technical Specification limiting conditions for operation, action statements and surveillance requirements which would enhance the availability of the PORVs to perform their design function.

As discussed above, the proposed changes do not result in any significant change in the configuration of the plant, equipment design or equipment use nor do they require any change in the accident analysis methodology. Therefore, no different type of accident is created. No safety analyses are affected. The accident analyses presented in the Updated Safety Analysis Report remain bounding.

(3) The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed changes to Technical Specification limiting conditions for operations, action statements and surveillance requirements will enhance the margin of safety provided by the Technical Specifications. The increase in the margin of safety is provided by an increase in the probability that the PORVs would be available if needed for accident recovery or for low temperature overpressure protection. Therefore, the proposed changes will not result in a significant reduction in the reduction in the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: L. B. Marsh.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: August 16, 1991

Description of amendment request: The proposed amendments would revise the Technical Specification 4.6.1.2.a and the associated bases such that Type "A" Overall Integrated Containment Leakage Rate testing is conducted at least once per 36 months with the provisions of the technical specification 4.0.2 applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The coupling of the ILRT to the ISI is not due to any known technical requirements and does not enhance the purpose of the Type A test nor does it provide any additional assurance of containment integrity. This coupling has not been assumed in any safety analysis.

The proposed change would allow the third test of each set to be conducted during a separate outage. The requirement to perform the two tests during the same outage stems from 10 CFR 50, Appendix J. The apparent basis for coupling the two types of tests is to assure that the three Type A tests are not grouped together during the first 90 months of each 10 year operating cycle. The proposed change would allow the 10 year Containment ILRT to be performed independent of the 10 year ISI. The manner in which the tests are performed as well as their respective acceptance criteria would remain unchanged.

II. This proposal does not create the possibility of a new or different type of accident from any accident previously evaluated.

Decoupling the Appendix J test from the 10 year ISI outage imposes no new requirements on plant operation or testing.

Operation of the plant in accordance with the proposed change remains bounded by existing safety analyses. The proposed change would only affect the scheduling of one of the three Type A tests during each 10 year service period. The scheduling and performance of the remaining Type A tests would not be affected. Actual test methods and acceptance criteria remain unchanged. There is no identified safety significance associated with the coupling of the two programs during the same outage.

III. This change does not involve a significant reduction in a margin of safety.

Appendix J testing and ISI are not related with respect to any safety margin and decoupling these two programs from the same outage in no way reduces the margin of safety associated with either program.

The proposed change would allow the third Containment ILRT during each 10 year service period to be conducted during a separate outage from the plant 10 year ISI. The actual test methods and procedures used to demonstrate containment leakage rates would not be affected. Appendix J requirements will continue to be met with an exemption to the schedular requirements of Section III.d.1(a).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, D.C. 20037

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: July 25, 1991

Description of amendment request: The proposed amendment revises Technical Specifications sections 4.0.5, APPLICABILITY; 3.4.3.1, LEAKAGE DETECTION SYSTEMS; 3/4.4.3.2 OPERATIONAL LEAKAGE; and associated BASES to conform to the NRC staff positions delineated in Generic Letter 88-01.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a physical or procedural change to any structure, component or system that has any significant effect on probability or consequences of any accident or malfunction of equipment important to safety previously evaluated in the Updated Final Safety Analysis Report (USFAR). The proposed changes will add clarifications, alternative actions, and new requirements to the TS that are suggested by NRC staff in Generic Letter 83-01, in their Safety Evaluation of the PSE&G response to that Generic Letter and in the NRC's final draft of NUREG 1433, Standard BWR 4 Technical Specifications.

The operation of HCGS in accordance with the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

There are no physical changes to the plant or to the manner in which the plant is operated involved in the proposed revision. Therefore, no new or different accident is created by the proposed change.

The operation of HCGS in accordance with the proposed change does not involve a significant reduction in a margin of safety.

The proposed changes provide clarifications and additional, conservative requirements to the TS, and address the Generic Letter 88-01 issues. Where existing TS requirements would be relaxed or modified, there has been no significant reduction in the information provided to control room operators and existing procedures provide necessary guidance so that manual determinations can be made to quantify leakage rates. Margins of safety are, therefore, not adversely affected by the proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Walter R. Butler

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment request: August 16, 1991

Description of amendment requests: The licensee proposes to modify the Technical Specification by deleting references to the Movable In-Core Detector System (MICDS) in Technical Specifications 3.3.3.2, "Incore Detector," and 3/4.8.4, "Electrical Equipment Protection Devices" (Table 3.8.1, "Containment Penetration conductor Overcurrent Protective Devices').

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

OPERABILITY of the movable in-core detectors is not required for any accidents previously evaluated. Removal of the MICDS will not impact any current accident analyses. The addition of pressure caps and the RTV plugs decreased the probability of a loss of coolant inventory because each cap is a passive mechanical device designed to withstand normal operating pressures and temperatures. The removal of hardware or the addition of pressure caps and the RTV plugs will not change any of the current accident analysis. The current accident analyses assume a 2" line break inside containment. In the unlikely event that the ICI calibration tube is breached and the pressure cap fails, this accident scenario is bounded by the analysis. In the event of a common mode failure where all 56 calibration tubes fail, the 2" line break is still bounding. The 56 calibration tubes have a total flow area of .887 square inches verses the 3.14 square inches for the 2" pipe. The modifications associated with the proposed change will not reduce protection of the containment penetrations or the long-term integrity of the RCS. All assumptions and results for previously evaluated accidents remain unchanged by the proposed amendment. Therefore, deletion of the MICDS will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

OPERABILITY of the MICDS is not required for any accidents previously evaluated. Removal of the MICDS will not change any current accident analyses. The pressure caps and RTV plugs are a passive restraint and act as another fission product barrier. There are no new accident scenarios associated with this modification. Any accident associated with this modification is bounded by current accident analyses. Therefore, deleting the MICDS will not create the possibility of a new or different kind of accident.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The proposed change narrows the definition of OPERABLE in-core detectors by excluding the MICDS as an alternate means to map the neutron flux in the core. Since the MICDS has been unavailable, the accurate representation of the spatial neutron flux distribution in the reactor core is best provided by the fixed in-core detectors. Except for start-up testing, the fixed detectors have always been used and have always been reliable. Thus, OPERABILITY remains unchanged by the proposed amendment. The In-Core Detectors Limiting Condition for Operation has two conditions which must be met to establish in-core detection system OPERABILITY. These two conditions do not distinguish whether the FICDS or the MICDS is to be utilized. The FICDS satisfies these conditions without the MICDS being available. The proposed change does not affect any of the assumptions or results of the safety analyses, does not diminish the protection provided by the LCO, and does not change the Bases. Therefore, operations of the facility in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: February 2, 1990

Description of amendment request: The proposed amendment would add two more neutron flux instruments to Technical Specification (TS) Table 3.3-10, "Post-Accident Monitoring Instrumentation," and to TS Table 4.3-10, "Post-Accident Monitoring Instrumentation Surveillance Requirements." Also, TS 3/4.9.2, "Refueling Operations - Instrumentation," would be changed to reflect the two additional neutron flux instruments and would be changed by adding a requirement to perform a channel calibration prior to entry into

Mode 6 (refueling) if not performed within the last 18 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated because the two additional neutron flux instruments will be used for indication only and not for input to the reactor protection system, which remains unchanged. Also, the original eight neutron flux instruments and their Technical Specification requirements are not being changed.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated accident because additional instruments for indication have no effect on plant design.

3. The proposed change will not involve a significant reduction in a margin of safety because the reactor protection system will not be changed. Also, the original eight neutron flux instruments and their Technical Specification requirements are not being changed.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: April 12, 1991

Description of amendment request: The proposed amendment would relocate the procedural details of the Radiological Effluent Technical Specifications (RETS) from the Technical Specifications (TS) to the Offsite Dose Calculation Manual (ODCM) or the Process Control Program (PCP). Also, new programmatic controls for radioactive effluents and radiological environmental monitoring are proposed for incorporation into TS Section 6, "Administrative Controls." These changes are consistent with the guidance provided by NRC Generic Letter 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."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Toledo Edison has reviewed the proposed change and determined that the proposed change does not involve a significant hazards consideration because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with this change would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the proposed change does not involve any changes to the configuration of the plant, its operation and maintenance, or change any existing requirements governing the amounts or types of radioactive material permitted to be released from the site. The principle [sic] effect of the proposed change is to transfer the review of most future changes to RETS requirements from the NRC to the licensee. Existing RETS requirements, which establish initial conditions or prevent previously evaluated accidents are unaffected by this proposed change and remain in Technical Specifications. Technical Specifications for the Waste Gas System oxygen monitor and explosive gas mixture concentration limits are retained. The requirements are intended to prevent a hydrogen explosion from rupturing the waste gas system.

For RETS requirements which are relocated to the ODCM and PCP, changes can be made without prior NRC approval. However, Technical Specifications require the licensee to review such changes against the same regulatory requirements as the NRC would use in reviewing license amendment requests. This limitation on the scope and flexibility of licensee changes to former RETS requirements ensures that any future changes will not significantly affect the probability of any previously analyzed accident. Furthermore, any changes which formerly would have required NRC review and approval of a change to the RETS will continue to be subject to the requirements of 10 CFR 50.59.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed change does not involve any changes to the configuration of the plant or any existing requirements governing the amounts or types of radioactive material permitted to be released from the site. The principle [sic] effect of the proposed change is to transfer the review of most future changes to RETS requirements from the NRC to the licensee. Existing restrictions which limit the consequences of postulated accidents are unaffected by this proposed change. Existing requirements limiting the inventory of temporary liquid holdup tank are retained in Technical Specifications. These restrictions on the liquid holdup tank inventory limit the offsite dose consequences from a liquid holdup tank failure. The consequences of this event are unaffected by the proposed change.

Technical Specifications require that future changes to former RETS requirements which are transferred to the ODCM and PCP be reviewed by the licensee against the same regulatory standards as the NRC would use in reviewing license amendment requests. This limitation on the scope and flexibility of licensee changes to former RETS requirements ensures that future changes will not significantly affect the consequences of any previously analyzed accidents. Furthermore, any hardware or procedure changes which formerly would have required NRC review and approval of a change to the RETS will continue to be subject to the requirements of 10 CFR 50.59.

2a. Not increase the possibility of a new kind of accident from any accident previously evaluated, because the proposed change does not involve any hardware changes or change any existing requirements for the release of radioactive liquid, gaseous, or solid waste from the site. Future changes to hardware or procedures used to implement former RETS requirements will continue to be subject to the requirements of 10 CFR 50.59. Consequently, any such changes will individually require a finding that the possibility of a new kind of accident from any accident previously evaluated is not created.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because the proposed change does not involve any hardware changes or change any existing requirements for radioactive releases from the plant. Future changes to hardware or procedures which implement former RETS requirements will continue to be subject to the requirements of 10 CFR 50.59.

3. Not involve a significant reduction in a margin of safety because the Technical Specifications will require that future changes to former RETS requirements which are transferred to the ODCM and PCP, be reviewed against the same regulatory standards (for example, 10 CFR 20.106, 40 CFR Part 190, 10 CFR 50.36a and 10 CFR 50 Appendix I) as the NRC would use in reviewing license amendment requests. This limitation on the scope of licensee changes to former RETS requirements assures that future changes will not significantly affect a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request

involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: December 11, 1990

Description of amendment request: The proposed amendment would delete the surveillance requirement for the cooling water flow rate to the reactor primary containment coolers from TSs 4 6.2.3.a.2 and 4.6.2.3.b. The licensee proposed that the Callaway Plant Heat Exchanger Monitoring Program, described in its letter dated January 29, 1990, be used as an alternative.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed changes to Technical Specification 3/4.6.2.3 would not involve a significant hazards consideration because operation of Callaway Plant with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The current Technical Specification surveillances do not provide any direction as to how to perform the specified flow rate verifications. These TS surveillances are presently being conducted as a part of the Callaway Plant Heat Exchanger Monitoring Program which is described in the licensee's response to NRC Generic Letter 89-13. This program is capable of detecting degraded flow rates thereby ensuring that the containment cooling system can perform its intended safety function.

2. Create the possibility of a new or different kind of accident from any previously evaluated. There is no new type of accident or malfunction being created and the method and manner of plant operation remains unchanged. The change provides an alternate method to verify that the cooling water flow rates to the containment coolers are sufficient to maintain the containment air temperature at an acceptable level during normal and emergency operation.

3. Involve a significant reduction in a margin of safety. The margin of safety remains unaffected since no design change is being made and the alternative surveillance program assures proper performance of the containment cooling system.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: December 11, 1990

Description of amendment request: The proposed amendment would delete the specific title designations of seven of the eight members of the Onsite Review Committee (ORC) from Technical Specification 6.5.1.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This change is administrative in nature only. The change merely generalizes the requirements for ORC composition to allow generic based membership appointments rather than appointments of specific title. The quality of representation remains unaltered.

2. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This change is administrative in nature only. The proposed language does not alter the requirements for ORC membership, does not alter the quorum, or the level of representation.

3. This change does not involve a significant reduction in a margin of safety. It is an administrative change only that reduces the need for amendment requests based solely on title changes but preserves all the requirements for ORC composition.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: March 15, 1991 (partial)

Description of amendment request: The amendment would revise Technical Specification (TS) 3.6.1.2 to change the required actions in the event that the measured overall integrated containment leakage rate (i.e., a Type A test) and the measured combined leakage rate for all penetrations and valves subject to Type B and C Tests fail their acceptance criteria.

The proposal introduces two new conditions for evaluating the two measured leakage rates cited above. These are the "as found" leakage condition and the "as left" leakage condition. The former is represented by the measured leakage rate at the end of a testing interval while the latter condition is the measured leakage rate after any repairs and/or adjustments are made to equipment which would thereby reduce the measured leakage rates for Type A, B and C tests.

The "as left" condition was proposed to be that condition which is required to satisfy the present limiting leakage rates prior to restarting the reactor (i.e., increasing the reactor coolant system (RCS) temperature above 200° F).

The proposed revisions to the Action Statement would also raise the acceptance criterion for the "as found" measured Type A test leakage rate from 0.75 L_a to 1.0 L_a. The L_a is defined in part, in Section II.K of Appendix J as the maximum allowable leakage rate as specified in the technical specifications.

Finally, the proposed revisions to the Action Statement in TS 3.6.1.2 would add three new actions in the event that the measured leakage rates for the Type B and C tests exceed the acceptance criterion of 0.60 L_a. In this case, the plant would be required to: (1) restore the

combined leakage rate to less than 0.60 L_a within 4 hours; or (2) isolate each failed penetration within 4 hours; or (3) be in at least hot standby within the next 6 hours and in cold shutdown within the following 30 hours.

A request for an Exemption from the requirements of Section III.A.5.b.(2) was submitted in the letter cited above in conjunction with the subject proposal to revise TS 3.6.1.2 and is being reviewed separately.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed revision to TS 3.6.1.2 does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. These proposed changes clarify an existing technical specification so as to provide more definitive corrective actions to take if the Limiting Conditions for Operation for containment leakage rates are not being met. Also, the demonstration that containment leakage rates are in conformance with the requirements of Appendix J to CFR Part 50 has been clarified. However, neither the intent of the subject TS has been changed nor has the offsite radiological consequences of an accident assumed in the safety analysis been altered.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. There are no proposed design changes that would create a new type of accident or malfunction. Additionally, the method and manner of plant operation would remain unchanged. The proposed changes would provide clearer guidance to accomplish actions consistent with present regulatory requirements.

3. Involve a significant reduction in a margin of safety. There are no changes being made to the acceptance criteria for limiting leakage rates which would adversely impact plant safety. The proposed changes impose corrective actions consistent with the requirements specified in Appendix J; i.e., they would meet the underlying purpose of the rule. Therefore, the margin of safety is unaffected.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: March 15, 1991 (partial)

Description of amendment request: The proposed amendment would revise the requirement in TS 4.6.1.2.b to define two conditions for this surveillance of the reactor primary containment leakage rate. The first condition would be the "as found" containment leakage rate measured at the end of the test interval of the periodic Type A tests. The second condition would be the "as left" containment leakage rate after repairs and/or adjustments to equipment had been made. This "as left" leakage rate would be measured during a refueling outage prior to restart of the reactor. The licensee has proposed that the acceptance criterion for the "as found" leakage rate be raised to L_a rather than the present criterion of 0.75 L_a. The "as left" acceptance criterion would remain as 0.75 L_a. The term L_a is defined in Section II of Appendix J to 10 CFR Part 50 as the maximum allowable leakage rate at the design basis pressure, P_a, as specified for preoperational tests in the Callaway Technical Specifications (TSs).

The licensee also proposed that TS 4.6.1.2.a be revised to delete the requirement that the third test of each set of three Type A tests be conducted during the shutdown for the 10-year plant inservice inspection.

A partial exemption from the requirements of Section III.A.1.(a) was submitted in conjunction with this proposed technical specification revision; this request is being evaluated separately.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

These changes are consistent with the proposed partial exemption request to 10 CFR Part 50, Appendix J, Section III.A.1(a) and do not involve an unreviewed safety question because operation of Callaway Plant with these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The Surveillance Requirement has been clarified to be more consistent with the objectives of Appendix J and the offsite radiological consequences of an accident assumed in the Safety Analysis have not been altered.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. There are no design changes being made that would create a new type of accident or malfunction and the method and manner of plant operation remain unchanged. The change to the Surveillance Requirement provides clarification consistent with regulatory requirements.

3. Involve a significant reduction in a margin of safety. There are no changes being made to the safety limits or safety system settings that would adversely impact plant safety. The change to the Surveillance Requirement is in conformance with the requirements specified in Appendix J.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: March 15, 1991 (partial)

Description of amendment request: The amendment would revise Technical Specification 4.6.1.2.a to delete the requirement to perform the third test of each set of 3 Type A tests during each 10-year service period when the plant is shutdown for the 10-year plant inservice inspections. This requirement is contained in Section III.D.1.(a) of Appendix J to 10 CFR Part 50. A request for an Exemption from this requirement was submitted in the letter cited above in conjunction with the subject proposal to revise TS 4.6.1.2.a and is being reviewed separately.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed change to TS 4.6.1.2.a to delete the requirement to perform the third test of each set of three Type A tests during the shutdown for the 10-year plant inservice inspection does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The deletion of this requirement from the Callaway TSs does not impact plant safety since the requirements in Section III.D.1.(a) of Appendix J to 10 CFR Part 50 to conduct the three Type A tests during each 10-year service period must still be complied with.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. There are no proposed design changes which could create a new type of accident or malfunction. Additionally, the method and manner of plant operation remains unchanged. The proposed change deletes an unnecessary tie between two regulations, but still meets the intent of the regulations.

3. Involve a significant reduction in a margin of safety. There are no proposed changes being made to safety limits which would adversely impact plant safety. The change deletes an unnecessary requirement that does not impact the margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: August 1, 1991

Description of amendment request: The proposed amendment would revise the inspection interval and corrective actions related to the visual inspection of the mechanical and hydraulic snubbers. The presently required inspection periods are contained in a table in Technical Specification (TS) 4.7.8.b. These inspection intervals are related only to the absolute number of inoperable snubbers determined in the prior snubber inspection. The subsequent inspection intervals in the present TSs range from 18 months ±25% if no inoperable snubbers were found previously to 31 days ±25% if eight or more snubbers were previously found inoperable.

The proposed revision adopts the methodology contained in the NRC's Generic Letter (GL) 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions," December 11, 1990. GL 90-09 introduced the concept that the significance of the number of failed snubbers (i.e., those found inoperable) should be determined in relation to the total population of snubbers in each category of snubbers. This is the basis for the proposed addition of TS Table 4.7-2 in which the snubber visual inspection interval is directly related to the number of snubbers in each category.

The acceptance criteria in TS 4.7.8.c was also proposed for revision as was Section 3/4.7.8, Snubbers, in the Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed change to Technical Specification 3/4.7.8 does not involve a significant hazards consideration because operation of the Callaway Plant with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The changes provide an alternative inspection interval for visual inspection that maintain the same confidence level as the existing schedule and generally allow the performance of visual inspections and corrective actions during plant outages. The changes do not impact the reliability nor availability of plant equipment.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes permit an inspection interval based on the number of inoperable snubbers found during the previous inspection in proportion to the sizes of various snubber populations or categories. There is no new type of accident or malfunction being created, and the method and manner of plant operation remain unchanged.

3. Involve a significant reduction in a margin of safety. The changes provide an alternative inspection interval for visual inspection that maintains the same confidence level as the existing schedule and generally allows the performance of visual inspections and corrective actions during plant outages. The changes do not impact the reliability nor availability of plant equipment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: August 7, 1991

Description of amendment request: The amendment would revise portions of Tables 4.3-1 and 4.3-2 of the Callaway Technical Specifications (TSs) by adding two notes clarifying presently conflicting requirements in the TSs. The present TS requirements require that certain surveillances related to the Overtemperature Delta-T (OT Delta-T) and Overpower Delta-T (OP Delta-T) channel calibrations be conducted at the beginning of each fuel cycle during startup testing.

TS 4.0.4 presently requires that these calibrations be performed prior to entry into an Operational Mode (i.e., Modes 2 and 1).

The subject surveillances require that certain restraints be satisfied; these restraints are contained in Notes 1, 2 and 3 of TS Table 2.2-1. The subject equations in these referenced notes contain the term Delta-T_o which is defined as the indicated Delta-T at Rated Thermal Power (RTP). However, the value of Delta-T_o cannot be measured unless entry is made into Mode 1 to increase power to RTP (i.e., 100 percent power). This contradiction in the TSs effectively precludes entry into Modes 2 and 1 after a refueling outage.

A similar conflict in TS requirements also exists for the surveillance requirements for the channel calibrations for the Vessel Delta-T (Power-1, Power-2) instrument loops. In this instance, the contradiction in the TSs effectively precludes entry into Modes 3, 2 and 1 after a refueling outage.

The proposal would add a note to the applicable Functional Unit in TS Table 4.3-1 (e.g., Item 7, OTDelta-T) stating that the provisions of TS 4.0.4 are not applicable to the subject surveillances for entry into Modes 2 and 1. In a similar fashion, a note would be added to the Functional Unit for Vessel Delta-T (Power-1, Power-2) stating the provisions of TS 4.0.4 are not applicable for entry into Modes 3, 2 and 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

This proposed amendment would not involve a significant hazards consideration because operation of the Callaway Plant in accordance with these revised Technical Specifications would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. Overall protection system performance will remain within the bounds of the accident analyses documented in Chapter 15 of the Final Safety Analysis Report (FSAR) and the Westinghouse reports WCAP-10961-P and WCAP-11883 since no design changes are proposed.

Specification 4.0.4 requires that surveillance requirements be current prior to entering a MODE covered by an individual specification's Limiting Condition for Operation (LCO). With regard to the OT Delta-T, OP Delta-T, and Vessel Delta-T (Power-1, Power-2) surveillances, which rely on input from Delta-T_o, TS 4.0.4 cannot be met since Delta-T_o is measured at 100% RTP. The accident analyses which take credit for reactor trips on OT Delta-T and SG low-low level, as well as AFW actuation on steam generator (SG) low-low level, are performed with the assumption that the plant is in MODE 1. The OT Delta-T trip, the OP Delta-T trip (which is a back-up trip for Callaway), and the SG low-low level trips will continue to function in a manner consistent with all current accident analysis assumptions.

Note 6 of TS Table 4.3-1 requires the measurement of loop-specific vessel Delta-T values when performing the quarterly incore/excore calibrations. These Delta-T values are then used to calculate loop-specific Delta-T gains in order to rescale the instrument loops. Note 6 applies above 75% RTP and states that TS 4.0.4 is not applicable for entry into MODES 2 or 1. The requested changes, applicable to channel calibrations during startup, provide similar clarification and consistency.

The attachment to the licensee's letter dated April 1, 1991, discussed the commitment to revise power ascension procedures to add provisions to verify the effect of Delta-T scaling on the OT Delta-T and OP Delta-T trip setpoints at power levels of 35%, 50%, 75%, and 100% RTP. These procedural changes will be completed prior to Refuel 5 (spring 1992) and will provide additional assurance that the Delta-T gains used during startup will be reflective of the actual Delta-T.

Therefore, allowing the plant to proceed into MODES 2 or 1 (MODES 3, 2, or 1 in the case of the Engineered Safety Features Actuation System (ESFAS) instrumentation listed in TS Table 4.3-2), which was the intent in Operating License Amendments 28 and 43, in order to measure Delta-T_o and complete the above Delta-T surveillances, will not increase the probability or consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. As discussed above, there are no design changes or hardware modifications associated with this amendment application nor are there any changes to the intended method of plant operation. The proposed additions of note 19 to TS Table 4.3-1 and note 4 to TS Table 4.3-2 recognizes the fact that the Delta-T surveillance requirements can only be met if TS 4.0.4 is not applicable for entry into MODES 2 or 1 (MODES 3, 2, or 1 in the case of ESFAS instrumentation listed in TS Table 4.3-2) since the plant must be at 100% RTP prior to the determination of Delta-T_o.

(3) Involve a significant reduction in a margin of safety. There will be no change to the minimum Departure from Nucleate Boiling Ratio (DNBR) discussed in Section 2.1.1 of the TS Bases and in the FSAR nor will this amendment alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: June 28, 1991

Description of amendment request: This application proposes changes to the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications to add a new specification to define dose equivalent I-131 consistent with a previous commitment made by the licensee. A change is also being proposed to clarify the minimum water level required for proper decay heat removal. In addition, revisions are being proposed to change part of the KNPP Technical Specifications to resemble the Standard Technical Specifications (STS) for Westinghouse Pressurized Water Reactors and to make administrative changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed changes would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The technical changes proposed are either more stringent, provide additional controls, enhance specifications or list additional surveillances. Where appropriate, they are equivalent to Westinghouse STS. The remainder of the changes are administrative in nature. Hence, the consequences of an accident previously evaluated would not be increased. In addition, the availability and/or reliability of safety-related equipment would not be affected. Thus, the probability of an accident previously evaluated would not be increased.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes would not alter the plant configuration, operating set points or overall plant performance. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated would not be created.

(3) involve a significant reduction in the margin of safety.

The proposed changes include enhancements to the specifications, more stringent controls and additional limitations. Hence, overall plant safety would be enhanced, and the margin of safety would not be reduced.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq., Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082.

NRC Project Director: John N. Hannon.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: March 30, 1990

Description of amendments request: The proposed amendments would make three unrelated changes to the Technical Specifications. Section 15.4.5, "Emergency Core Cooling System and Containment Cooling System," would be revised by changing the testing requirements for the safety injection system to allow the test to be performed while the motor breakers for the safety injection and residual heat removal pumps are racked in and operable. The current specification requires that the motor breakers be in the "test" position.

The second change affects Section 15.4.6, "Emergency Power System Periodic Tests," by relocating from subsection A.2. to a new subsection A.3 the requirement that during each reactor refueling a checkout of emergency lighting be performed, including the changeover relay for DC lights. The change also effectively eliminates the requirement that the test of the emergency lighting be done during the test of the automatic start of the diesel generators. The amendments would change the term "changeover relay" to read "automatic transfer switch." The licensee proposes adding a description of the emergency lighting checkout procedures to the corresponding bases section of the technical specifications.

The third change is to delete the two requirements of Technical Specification 15.6.12, "Environmental Qualification." This specification required "By no later than June 30, 1982 all safety related electrical equipment in the facility shall be qualified" in accordance with specified guidelines. It also required that by December 1, 1980 "complete and auditable records be available... which describe the environmental qualification method used for all safety-related electrical equipment..." The specification proposed for deletion continues to require that "Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The amendments would not involve a significant increase in the probability or consequence of an accident previously evaluated.

The licensee states that the first change is proposed because placing both RHR breakers in the test position as required by specification 15.4.5.I.A.1.a under some circumstances may result in a violation of specification 15.3.1.A.3 which requires conditions under which RHR pumps must be operable. The position of the motor breakers does not affect the accomplishment of the purpose of the test which is to demonstrate that the safety injection and residual heat removal pump breakers will operate correctly when given a safety injection signal. Since the amendments affect only the procedure for conduct of a surveillance test, the change would not affect the probability or consequences of an accident previously evaluated.

The second change relocates a surveillance requirement within the technical specifications but gives additional flexibility in performing the surveillance of emergency lighting by allowing it to be done at anytime during a refueling outage rather than requiring that it be done in conjunction with diesel generator testing. The location of the requirement within the technical specifications has no bearing on the determination of no significant hazards. The procedure for performing a surveillance is changed; however, the requirement that the surveillance be performed is not altered. The licensee found no necessity for performing the lighting test at the same time as the diesel test. Therefore, there would be no impact on the probability or consequences of any accident previously evaluated.

The third change is administrative in that the substantive requirements of the specification have already been accomplished or are addressed in another section of the technical specifications or are codified in 10 CFR 50.49. Therefore there is no relaxation in any requirement and there is no impact on the probability or consequence of any accident previously evaluated.

The amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated. There is no change to plant equipment or to plant operating procedures. The first two changes affect only the procedures for performing surveillances but do not affect the requirements that the surveillances be performed. The third change is administrative.

These changes would not involve a significant reduction in a margin of safety. Neither the scope nor frequency nor effectiveness of the surveillance tests affected by the first two changes would be altered by the amendment. The margin of safety afforded by performing the surveillances would therefore not be affected.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: June 1, 1990

Description of amendments request: The proposed amendments would change Technical Specification 15.3.3, "Emergency Core Cooling System, Auxiliary Cooling Systems, Air Recirculating Fan Coolers, and Containment Spray." Specifically, Specification A.2.a, would be changed to say "One accumulator may be isolated to perform a check valve leakage test or be otherwise inoperable for a period of up to one hour." The current specification only addresses inoperability to perform the check valve

leakage test. The amendments would revise the corresponding bases section to reflect the change to the specification.

The amendments would also make a correction to the bases section of Technical Specification 15.3.0, "Limiting Conditions for Operation, General Considerations." The bases section cross references the section on the accumulators saying: "For example, Specification 15.3.3.A.2.e permits a single Reactor Coolant System accumulator to be isolated for up to one hour during power operations." The correct cross reference should be to Specification 15.3.3.A.2.a. This correction to the bases is of no safety significance and is not considered further in making a determination of no significant hazards consideration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The amendments would not increase the probability or consequences of an accident previously considered. The purpose of the accumulators is to provide an immediate source of cooling water following a loss of coolant accident (LOCA). The licensee notes that isolation of an accumulator will prevent it from injecting during a loss of coolant accident (LOCA). This is potentially an effect on the consequences of the LOCA, but not on the probability of the LOCA.

Even though the amendments would allow an accumulator to be inoperable for any reason for up to 1 hour, the licensee believes that the proposed amendments are more restrictive than the existing specification and therefore would not affect the consequences of the LOCA. In the past, the licensee cross-connected the accumulators as an interim measure when instrumentation problems have rendered an accumulator inoperable. With the accumulators cross-connected, the licensee did not believe they were constrained by the technical specification operability requirement. As a result of their analysis of a recent event at Point Beach, the licensee determined that cross connecting the accumulators may limit the water available for injection during a LOCA resulting from a cold leg break.

Following their determination of the shortcomings of this approach, the licensee has proposed that the same 1-hour time limit applied to rendering the accumulators inoperable to perform the leak test be applied for returning an accumulator to service when it is inoperable for mechanical or electrical reasons. They contend that this is more restrictive than their previous practice which resulted in cross-connecting for periods longer than 1 hour. They also contend that the staff has found 1 hour for isolation for unspecified cause to be acceptable in the Westinghouse Pressurized Water Reactor Standard Technical Specifications.

Therefore they do not believe that the amendments would increase the probability or consequences of the LOCA.

The amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated. There is no change to plant equipment or components or to plant operating procedures. The change makes the technical specifications more restrictive without imposing any other requirement. Therefore no new or different accident can be postulated.

The amendments would not involve a significant reduction in a margin of safety. Although the amendments allow the reactors to remain at power with an accumulator inoperable, the licensee believes that the amendments provide greater restriction on this than the current specification. Additionally, the alternative of holding the licensee rigorously to the requirement that the inoperability provision could only be applied during testing would result in the licensee proceeding toward shutdown in instances when the accumulator could be restored to operability within the hour.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Previously Published Notices Of Consideration Of Issuance Of Amendments To Operating Licenses And Proposed No Significant Hazards Consideration Determination And Opportunity For Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: August 8, 1991

Description of amendment request: The proposed amendment would decrease the flow measurement uncertainty to be applied to the reactor coolant system (RCS) flow surveillance, lower the RCS flow limit, increase the power level at which the flow is determined by precision heat balance, and supplement the corresponding Technical Specification Bases.

Date of publication of individual notice in **Federal Register:** August 19, 1991 (56 FR 41147)

Expiration date of individual notice: September 18, 1991

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

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, D.C., 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.

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of amendment request: June 17, 1991, as supplemented July 23, 1991, and August 9, 1991

Brief description of amendment: The amendment changes the TS to authorize a one-time extension, until November 21, 1991, of the inspection intervals required by TS 4.8.1.1.2.d.1 for the emergency diesel generators.

Date of issuance: August 13, 1991

Effective date: August 13, 1991

Amendment No.: 185

Facility Operating License No. DPR-62: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 10, 1991 (56 FR 31432) The July 23, 1991, letter provided actual running hours for EDG 3 and EDG 4 and corrected a typographical error in the June 17, 1991, submittal, but did not change the initial proposed no significant hazards consideration determination as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 13, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

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: June 13, 1991

Brief description of amendments: Revision of Technical Specifications to return information to Table 4.2-1 that had been previously approved and inadvertently omitted in subsequent amendments.

Date of issuance: August 14, 1991

Effective date: August 14, 1991

Amendment Nos.: 131 and 126

Facility Operating License Nos. DPR-29 and DPR-30. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 10, 1991 (56 FR 31432) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 14, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: April 27, 1990

Brief description of amendments: The amendments revised the Technical Specifications to add a Limiting Condition for Operation and Surveillance Requirement for the Containment Spray Recirculation Phase System. The bases were also revised to address the system requirements.

Date of issuance: August 14, 1991

Effective date: August 14, 1991

Amendment Nos.: 128 and 117

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 11, 1990 (55 FR 28474) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 14, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: November 15, 1988 as supplemented

Brief description of amendment: This amendment clarifies the accident monitoring instrumentation requirements of the Technical Specifications (TS) to eliminate confusion with the current TS and better reflect Fermi-2 compliance with regulatory requirements specifically, for the Standby Gas Treatment System.

Date of issuance: August 5, 1991

Effective date: August 5, 1991

Amendment No.: 73

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21305) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments. April 11, 1991, as supplemented May 20, 1991

Brief description of amendments: The amendments revise the limit for the control rod drop time test from 3.3 seconds to 2.2 seconds.

Date of issuance: August 15, 1991

Effective date: August 15, 1991

Amendment Nos.: 89 and 83

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 10, 1991 (56 FR 31432) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 1991

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: April 11, 1991, as supplemented May 20, 1991

Brief description of amendments: The amendments revise Technical Specification 3.1.3.4 to change the value of the required control rod drop time from 3.3 seconds to 2.2 seconds.

Date of issuance: August 21, 1991
Effective date: August 21, 1991
Amendment Nos.: 124, 106
Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 12, 1991 (56 FR 27042) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 21, 1991
No significant hazards consideration comments received: No.
Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 16, 1989 as supplemented by letter dated September 14, 1990.
Brief description of amendment: The amendment revised the Technical Specifications by changing the frequency of select channel fucntional tests from monthly to quarterly. The channel functional tests involved are on the Reactor Protection System (RPS) and the Engineered Safety Feature Actuation Systems (EFAS) and all monthly tests, except for the automatic acuation tests and the reactor trip breakers tests, are changed to quarterly.
Date of issuance: August 8, 1991
Effective date: August 8, 1991
Amendment No.: 69
Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 21, 1990 (55 FR 6106) The supplemental information contained in letter dated September 14, 1990, was clarifying in nature and thus, within the scope of the NRC staff's proposed no significant hazards considerations determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 1991.
No significant hazards consideration comments received: No.
Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: March 15, 1991, as revised May 24, 1991
Brief description of amendment: The amendment changed the Technical Specifications by deleting the schedule for withdrawal from the reactor of the reactor pressure vessel material surveillance specimens and references to the schedule in a surveillance requirement.
Date of issuance: August 12, 1991
Effective date: August 12, 1991
Amendment No: 81
Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** July 10, 1991 (56 FR 31433) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1991.
No significant hazards consideration comments received: No
Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: April 4, 1991, as supplemented June 12, 1991.
Brief description of amendments: These amendments (1) revise the setpoint values of the 480V load centers undervoltage relays, (2) incorporate the additional fire detection and manual fire fighting features installed as a part of the Emergency Power System Enhancement Project, and (3) incorporate miscellaneous administrative changes. Since the voltage and time delay trip settings have been calculated using a new computer program, the staff requires that the new software's analytical techniques and assumptions be verified by actual test and the results be provided to the NRC prior to the next refueling outage.
Date of issuance: August 16, 1991
Effective date: August 16, 1991
Amendment Nos. 145, 140
Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24209) The June 12, 1991 letter provided additional information that did not change the staff's initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 16, 1991.
No significant hazards consideration comments received: No
Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: March 29, 1991
Brief description of amendments: These amendments include a revision to denote correct location of references for shutdown margin requirements for Mode 5 and for control rod bank insertion limits.
Date of issuance: August 21, 1991
Effective date: August 21, 1991
Amendment Nos.: 42, 22
Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20039) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 21, 1991.
No significant hazards consideration comments received: No.
Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: April 16, 1991
Brief description of amendment: The amendment revises Technical Specification Surveillance Requirement 4.3.8.2.a "Turbine Overspeed Protection System" by reducing the testing frequency of the high pressure turbine control valves from once every 7 days to once every 31 days. The change in the testing interval is recommended by the turbine vendor based on accumulated operating experience and a change in the basis for calculating missile probability.
Date of issuance: August 20, 1991
Effective date: August 20, 1991
Amendment No.: Amendment No. 59
Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24212) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 1991.
No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: December 28, 1989

Brief description of amendment: The amendment revised Section 3.6 of the Technical Specifications to change the pressure-temperature curves to comply with Revision 2 of Regulatory Guide 1.99 and updated references to the reactor vessel surveillance capsule testing program to reflect the analysis of the first vessel specimen capsule.

Date of issuance: August 12, 1991

Effective date: August 12, 1991

Amendment No.: 172

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 10, 1991 (56 FR 31435) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: February 28, 1990

Brief description of amendment: The amendment revised Section 1.0 of the Technical Specifications to remove the 3.25 limit on extending consecutive surveillance intervals.

Date of issuance: August 12, 1991

Effective date: August 12, 1991

Amendment No.: 173

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 10, 1991 (56 FR 31438) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S E., Cedar Rapids, Iowa 52401

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: December 14, 1990

Brief description of amendment: The amendment revised the Duane Arnold Energy Center Technical Specifications, Sections 1.0, 3.4, 3.5, and 3.7 to eliminate conditional surveillances for the Standby Liquid Control System (SLCS), Emergency Core Cooling System (ECCS), Reactor Core Isolation Cooling Subsystem (RCIC), Standby Gas Treatment System (SGTS), and associated auxiliaries. (ECCS includes the Core Spray Subsystem, Low Pressure Coolant Injection Subsystem (LPCI), High Pressure Coolant Injection System (HPCI), and Automatic Depressurization System (ADS)).

Date of issuance: August 12, 1991

Effective date: August 12, 1991

Amendment No.: 174

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 13, 1991 (56 FR 27275) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: June 13, 1991

Brief description of amendment: Revises the Appendix A Technical Specifications to (a) correctly describe controls and instrumentation provided for cycling the drywell vacuum breakers open and closed, and (b) change the minimum diesel generator fuel supply requirement from 32,000 gallons to 34,500 gallons.

Date of issuance: August 12, 1991

Effective date: August 12, 1991

Amendment No.: 80

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 10, 1991 (56 FR 31440) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1991.

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.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: June 7, 1991

Brief description of amendment: This amendment revises the surveillance values for the flow rates for the emergency core cooling system pumps. The changes are consistent with accident analysis and pump performance requirements, and allow margin for measurement uncertainty. Also, new surveillance requirements are added to ensure that the accident analyses assumptions are met.

Date of issuance: August 9, 1991

Effective date: August 9, 1991

Amendment No.: 170

Facility Operating License No. NPF-1: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 26, 1991 (56 FR 29279) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: June 12, 1991

Brief description of amendments: These amendments replaced the existing paragraph in Section 4.2.1, Aquatic Monitoring of the Environmental Protection Plan, Appendix B.

Date of issuance: August 15, 1991

Effective date: August 15, 1991, and shall be implemented within 60 days

Amendment Nos. 129 and 108

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Environmental Protection Plan, Appendix B of the license.

Date of initial notice in **Federal Register:** July 10, 1991 (56 FR 31441) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112

West Broadway, Salem, New Jersey 08079

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of application for amendment: December 14, 1990 as supplemented on April 24, 1991, June 14, 1991, and July 15, 1991.

Brief description of amendment: The amendment revises the technical specifications involving permitting a safety injection (SI) pump to be made operable in operating modes 5 and 6.

Date of issuance: August 13, 1991

Effective date: August 13, 1991

Amendment No.: 5

Facility Operating License No. NPF-86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24217) The Licensee's June 14 and July 15, 1991 supplemental letters provided additional information relating to the application, within the scope of the May 29, 1991 notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 13, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: January 19, 1988

Brief description of amendment: This amendment extends the expiration date from April 25, 2006 to September 18, 2009.

Date of issuance: August 8, 1991

Effective date: August 8, 1991

Amendment No.: 44

Facility Operating License No. DPR-18: Amendment revised the License.

Date of initial notice in **Federal Register:** March 23, 1988 (53 FR 9513) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 1991

No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: April 15, 1991 and supplemented May 7, 1991.

Brief description of amendments: These amendments remove the shutdown cooling system auto-closure interlock surveillance requirement on Technical Specification 3/4 5.2, "ECCS Systems - Tavg Greater Than or Equal to 350° F." Removal of the auto-closure interlock is consistent with recommendation in Generic Letter 88-17, "Loss of Decay Heat Removal," and will enhance plant safety during mid-loop operations.

Date of issuance: August 12, 1991

Effective date: August 12, 1991

Amendment Nos.: Unit 2; 97 and Unit 3; 86

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20046) Information provided by the licensee in its May 7, 1991 letter was at the request of the NRC, and did not affect the proposed no significant hazard consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 12, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: December 14, 1990 (TS 90-22)

Brief description of amendment: The amendment consists of Technical Specification changes to incorporate the overtime limit guidance from Generic Letter 82-16. In addition, certain personnel position title and approval authority changes are incorporated into Section 6.0.

Date of issuance: August 22, 1991

Effective date: August 22, 1991

Amendment Nos.: 152 for Unit 1; 142 for Unit 2

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 23, 1991 (56 FR 2556) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: June 4, 1991

Brief description of amendment: The amendment removes the operability requirements for decay heat isolation valve interlock channels and pressurizer heater interlock channels in Modes 4 (hot shutdown) and 5 (cold shutdown).

Date of issuance: August 14, 1991

Effective date: August 14, 1991

Amendment No. 159

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 26, 1991 (56 FR 29282) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: July 1, 1988, as modified October 20, 1989

Brief description of amendments: These amendments delete the requirement to submit a Special Report of the reactor coolant iodine limits are exceeded for 300 hours in a 6-month period. In addition, information regarding fuel burnup by core region has also been deleted. Finally, Technical Specification 6.6.A.2 has been revised to include an annual report in which the specific activity events will be reported. These changes are in accordance with NRC Generic Letter 85-19, "Reporting Requirements on Primary Coolant Iodine Spikes."

Date of issuance: August 12, 1991

Effective date: August 12, 1991

Amendment Nos. 160, 159

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 22, 1989 (54 FR 7746) and July 10, 1991 (56 FR 31444)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application amendment: October 4, 1990 (G02-90-168)

Brief description of amendment: The amendment revises the Technical Specification action statement 3.3.4.1.b to acknowledge a modification to the anticipated transient without scram (ATWS) recirculation pump trip (RPT) logic circuit by (1) providing that pump trip logic channels determined to be inoperable be placed in the tripped condition; (2) requiring that with the number of operable channels per trip function less than the minimum allowed, the remaining channels be verified operable within 1 hour; (3) reducing the time allowed for operation with less than the minimum number of operable channels from 8 hours to 6 hours; and (4) revising the minimum number of ATWS RPT channels per trip function required to be operable from 1 to 2.

Date of issuance: August 9, 1991

Effective date: August 9, 1991

Amendment No.: 93

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 6, 1991 (56 FR 4874). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 1991.

No significant hazards consideration comments requested: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 14, 1991

Brief description of amendment: The amendment revises Technical Specification 3.1.3.4 to increase the maximum allowed control rod drop time from 2.2 to 2.7 seconds. The purpose of this change is to support the planned use of Westinghouse VANTAGE-5H fuel assemblies at the Wolf Creek Generating Station.

Date of Issuance: August 22, 1991

Effective date: August 22, 1991

Amendment No.: Amendment No. 47

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 1991 (56 FR 27051)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 14, 1991

Brief description of amendment: The license amendment revises Technical Specification 5.3.2, "Control Rod Assemblies," to allow the use of silver-indium-cadmium as the neutron absorbing material in control rods. Technical Specification 5.3.2, which previously specified hafnium as the neutron absorbing material, has been revised to allow the use of hafnium control rods, silver-indium-cadmium control rods, or a mixture of both types.

Date of Issuance: August 22, 1991

Effective date: August 22, 1991

Amendment No.: Amendment No. 48

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 1991 (56 FR 27051) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Dated at Rockville, Maryland, this 27th day of August 1991.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II. Office of Nuclear Reactor Regulation

[Doc. 91-21030 Filed 9-3-91; 8:45 am]

BILLING CODE 7590-01-D

[Docket Nos. 50-348-CivP and 50-364-CivP; ASLBP No. 91-626-02-CivP]

Alabama Power Co.; Joseph M. Farley Nuclear Plant, Units 1 and 2

August 28, 1991.

Notice

Before Administrative Judges:
John H Frye, III, Chairman
Dr. James H. Carpenter
Dr. Peter A. Morris

Please take notice that a prehearing conference in the above matter will take place on Wednesday, October 2, 1991, commencing at 9 a.m. in the Commission's hearing room, fifth floor, 4350 East-West Highway, Bethesda, Maryland. The purpose of the conference is to facilitate the scheduling of direct testimony, prehearing motions, if any, and the time and location of the hearing.

It is so Ordered.

For the Atomic Safety and Licensing Board.

John H Frye, III,

Chairman, Administrative Judge.

[FR Doc. 91-21150 Filed 9-3-91; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A91-14]

Union Level, Virginia 23973 (W.D. Phillips, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued August 29, 1991.

Before Commissioners:
George W. Haley, Chairman;
Henry R. Folsom, Vice-Chairman;
John W. Crutcher; W.H. "Trey" LeBlanc III;
Patti Birge Tyson.

Docket Number: A91-14.

Name of Affected Post Office: Union Level, Virginia 23973.

Name(s) of Petitioner(s): W.D. Phillips, et al.

Type of Determination: Closing.

Date of Filing of Appeal Papers: August 23, 1991.

Categories of Issues Apparently Raised:

1. Effect on the community (39 U.S.C. 404(b)(2)(A).

2. Effect on postal services (39 U.S.C. 404(b)(2)(C).

3. Postal Service observance of legal procedural requirements (39 U.S.C. 404(b)(2)(B).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before September 9, 1991.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**. By the Commission.

Charles L. Clapp,

Secretary.

Appendix

August 23, 1991	Filing of Petition.
August 29, 1991	Notice and Order of Filing of Appeal.
September 17, 1991	Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)].
September 27, 1991	Petitioners' Participant Statement or Initial Brief [see 39 CFR 3001.115 (a) and (b)].
October 27, 1991	Postal Service Answering Brief [see 39 CFR 3001.115(c)].
November 1, 1991	Petitioners' Reply Brief should Petitioners choose to file one [see 39 CFR 3001.115(d)].
November 8, 1991	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116].
December 20, 1991	Expiration of 120-day decisional schedule [see 39 U.S.C. 404(b)(5)].

[FR Doc. 91-21130 Filed 9-3-91; 8:45 am]
BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29616; File No. SR-NASD-91-38]

Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Subscriber Fee for Receipt of OTC Bulletin Board Quotation Information and a Position Charge for Broker-Dealers Utilizing the OTC Bulletin Board Service

August 27, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 6, 1991, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), the following is the full text of a proposed rule change by the NASD to establish (1) a bundled information feed and subscriber charge for receipt of both Nasdaq Level 1 and OTC Bulletin Board ("OTCBB") quotation information and (2) a revised position charge for broker-dealers that display quotations or trading interest in the OTCBB service. The new fees will be published in part IX of Schedule D to the NASD By-Laws. (Additions are italicized and deletions bracketed.)

A. System Services

1. Nasdaq Level 1 Service

The charge to be paid by the subscriber for each terminal receiving Nasdaq Level 1 Services is [$8.75] *$9.25* per month. *This Service includes (i) inside bid/ask quotations calculated for securities quoted in the Nasdaq System and securities quoted in the OTC Bulletin Board ("OTCBB") service and (ii) the individual quotations or indications of interest of broker-dealers utilizing the OTCBB service.*

* * * * *

15. OTC Bulletin Board Service

The following charge shall apply to a broker-dealer that displays quotations or trading interest in the OTC Bulletin Board service:

Position charge
$5.00/security/month

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is seeking to implement two new fees in connection with initiating vendor distribution of OTCBB quotation information. First, the NASD proposes a fee of $9.25/terminal/month that would apply to all subscriber terminals or equivalent devices that are subject to the Level 1 fee for receipt of Nasdaq/OTCBB quotation data from an authorized Level 1 vendor.[1] Payment of the proposed fee would entitle a subscriber to receive an expanded range of quotation information from the OTCBB service, in addition to the present inside bid/ask data for Nasdaq securities.

Level 1 service will now include access to inside bid/ask prices calculated for OTCBB issues and the individual quotations/indications of interest entered into the OTCBB by participating member firms.[2] For a

[1] A subscriber device authorized for Nasdaq Level 1 Service currently offers real-time access to the inside bid/ask prices (*i.e.*, the highest bid and lowest offer being displayed by registered market makers in a particular security) for any security quoted in the Nasdaq system. Level 1 subscribers receive this service through vendors that have contracted with the NASD and its subsidiary, NASDAQ, Inc. to distribute this information.

[2] The quotations/indications of individual firms supplied to vendors will also include each firm's market maker identifier.

particular OTCBB security, the NASD will calculate and distribute an inside bid/ask provided that the security has at least two registered market makers, each displaying two-sided quotations. If additional market makers are displaying either one or two-sided quotations, those priced entries also will be factored into the inside market calculation.[3] If the basic requirement of two market makers is not satisfied, the NASD will generate an indication that no inside quotation is available. Similarly, if the inside calculation yields a locked/crossed market, an indication of that condition will appear in lieu of the inside quotation. The quotes of individual market makers will be distributed regardless of whether an inside bid/ask is available for a particular OTCBB security. Finally, all priced quotations distributed on foreign securities/ADRs quoted in the OTCBB will carry an indicator reflecting the non-firm character of those quotations.[4] The precise nature of OTCBB information provided to subscribers will of course depend upon the information display made available by individual vendors.

Because Nasdaq and OTCBB quotation information will be distributed through the same Level 1 vendor feeds, the NASD will require that vendors distributing OTCBB information append a unique identifier to differentiate quotations in Nasdaq issues from OTCBB issues. This feature is intended to ensure that retail brokers and their customers can readily distinguish between Nasdaq and OTCBB quotation data.

Second, the NASD is proposing a revised charge of $5/security position/month that would apply to every NASD member electing to display quotations or trading interest in the OTCBB service. This fee represents a reduction from the position charges that have been in effect since the inception of the OTCBB service in June, 1990. The latter was based on the position charges assessed broker-dealers for listings in the Pink Sheets ™, a printed quotation medium.

The NASD expects to implement new software for the expanded Level 1 service no later than September 30, 1991. The proposed subscriber charge of $9.25 and the position charge of $5.00 will take effect at that time.

The NASD believes the proposed rule change is consistent with section 15A(b)(5) and section 17B of the Act. Section 15A(b)(5) requires that the rules of a national securities association "provide for the equitable allocation of reasonable dues, fees, and other charges among members, and issuers and other persons using any facility which the association operates or controls." In reducing the security position fee, the NASD is reflecting the continuing expanded usage of the OTCBB service by member firms engaged in market making. Further, in formulating the new Level 1 fee, the NASD has sought to equitably spread the costs of disseminating OTCBB quotation data over a broad base of end users. Additionally, the distribution of OTCBB quotation data via the Level 1 vendor feeds will effectuate the broadest possible dissemination of quotation information on OTCBB securities. This result is fully consistent with section 17B of the Act which mandates establishment of an automated quotation system for penny stocks. Subsection (b) thereunder contemplates the widespread dissemination of reliable and accurate quotation information on stocks traded through such a system. Vendor dissemination of OTCBB quotation information constitutes a further enhancement of the OTCBB service to meet the requirements of section 17B.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of the Securities Exchange Rule 19b-4 because it establishes a fee imposed by the NASD. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 25, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-21078 Filed 9-3-91; 8:45 am]

BILLING CODE 8010-01-M

[3] Bids or offers accompanied by "UNS," the unsolicited customer indicator, will not be factored into an inside calculation because they do not reflect the dealer interest of a registered market maker.

[4] OTCBB quotations in foreign/ADR issues are non-firm because market makers in these issues may only update their quotes twice daily, once between 8:30 a.m. and 9:30 a.m. Eastern Time and once between noon and 12:30 p.m. Eastern Time. With respect to priced bids/offers for domestic securities, these quotations must be firm for one unit of trading.

[Release No. 34-29617; File No. SR-PTC-91-12]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to the Close-Out of Repurchase Agreement Transactions

August 27, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 21, 1991, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-PTC-91-12) as described in Items I, II, and III below, which Items have been prepared by PTC. The Commission is granting accelerated approval of the proposed

[1] 15 U.S.C. 78s(b).

rule change on a temporary basis through December 31, 1991.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change clarifies the action a PTC participant may take to close-out a repurchase agreement ("repo") transaction that is processed through PTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to clarify action that may be taken by participants to close-out repurchase agreement transactions processed through PTC. PTC provides a repurchase accounting facility whereby the PTC accounts of the parties to a repurchase agreement are credited to reflect the right to repurchase the securities ("repo out position") and the corresponding obligation to resell the securities ("repo in position"). The intent of the repo accounting function is to facilitate the transfer of securities between the parties to a repurchase agreement. In addition, PTC disburses the principal and interest ("P&I") attributable to the underlying securities to the participant with the repo out position due to that participant's continuing right to repurchase the securities.

Article III, Rule 1, section 1(b) of PTC's rules states, in effect, that the participant with the repo in position ("repo in participant") may request a debit to its repo in position "to reflect the fulfillment of its obligation to resell the securities" to the participant with the repo out position ("repo out participant"). This would result in a corresponding debit to the repo out position thus "closing-out" the repo entries and terminating the P&I payments. PTC had recognized that there are situations, in addition to the resale of securities to the repo out participant, where, pursuant to the terms of a repurchase agreement, the repo in participant may have closed-out its position or otherwise taken action which effectively terminates its obligations to the repo out participant and which eliminates the need for maintenance of the repo in and repo out positions by PTC. Although not specified in the rule, PTC has, as a practice, allowed the repo in participant to instruct PTC to close-out the repo positions.

The practice of permitting a unilateral instruction in these instances is consistent with the participant's contractual rights under a repurchase agreement. PTC had, therefore, determined to eliminate the repo out and repo in positions as of the date provided by the repo in participant in a representation from the repo in participant which states that, pursuant to the terms of the repurchase agreement, it is no longer obligated to resell the securities. The consequence of elimination of the positions is that the equivalents of P&I are not credited to the repo out participant on the distribution date. In addition, in the ordinary course, the repo out participant is notified of the elimination of the positions. PTC believes that this practice in fact reflects its participants' rights under a repurchase agreement.

(2) Basis

Since the practice described, which is being filed as a rule change, will facilitate the prompt and accurate clearance and settlement of securities transactions for which PTC is responsible, it is consistent with section 17A of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

PTC has met with representatives of the Public Securities Association and the Federal Reserve Bank of New York and has discussed the proposal as now contained in the Administrative Bulletin. In addition, PTC has discussed its current and proposed method of closing-out repos with various participants and has received positive responses to the proposal. PTC has not received any unsolicited written comments from participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

PTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. PTC states that it is imperative that participation in PTC does not hinder the contractual rights of its participants and that there are no misunderstandings about PTC's procedures and actions in this area. PTC believes that the repo in participant must be able to freely liquidate or transfer freely the collateral as permitted by the repurchase agreement. PTC believes the closeout procedures allows for such action. PTC further believes that without the close-out procedures, PTC, not withstanding such liquidation or transfer, could debit the position of the repo in participant for the equivalent of the P&I payments. However, this would impose a financial burden on the participant that it would not have if the securities were held in physical form and that may contradict the participant's contractual rights.

The Commission finds that PTC's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies and, in particular, the requirements of sections 17A(b)(3)(A) and (F).[2] Those sections require that a clearing agency be organized, have the capacity to facilitate, and have rules designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the procedures embodied in PTC's proposal will better enable PTC to meet this statutory requirement by removing any misunderstandings or ambiguities about PTC's procedures governing the close-out of repo transactions.

The Commission also finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of filing. Accelerated approval will permit PTC to clarify immediately its repo close-out procedures and will remove the risks associated with any misunderstandings or ambiguities that currently exist. Temporary approval of the proposal will permit PTC, its participants, and the Commission to determine whether these procedures meet the expectations of all repo parties, and, if not, whether further

[2] 15 U.S.C. 78q-1(b)(3)(A) and (F).

changes or clarifications are appropriate.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR-PTC-91-12 and should be submitted by September 25, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[3] that the proposed rule change (File No. SR-PTC-91-12) be, and hereby is, approved on a temporary basis through December 31, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

FR Doc. 91-21144 Filed 9-3-91; 8:45 am

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

August 28, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Graham-Field Health Products, Inc.
Common Stock, $.025 Par Value (File No. 7-7194)

Nuveen Quality Income Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No 7-7195)

SPI Pharmaceuticals, Inc.
Common Stock, $.01 Par Value (File No. 7-7196)

Western Investment Real Estate Trust
Shares of Beneficial Interest, No Par Value (File No. 7-7197)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 19, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-21079 Filed 9-3-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

August 28, 1991.

The above named national securities exchange has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following security:

CBI Industries, Inc.
Common Stock, $2.50 Par Value (File No. 7-7193)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 19, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-21080 Filed 9-3-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; (American Precision Industries, Inc., Common Stock, $.66⅔ Par Value) File No. 1-5601

August 28, 1991.

American Precision Industries, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The Common Stock of the Company commenced trading on the New York Stock Exchange ("NYSE") at the opening of business on August 8, 1991, and concurrently therewith such stock was suspended from trading on the Amex.

In making its decision to withdraw its Common Stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Common Stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its Common Stock and believes that dual listing would fragment the market for its Common Stock.

Any interested person may, on or before September 19, 1991 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the

[3] 15 U.S.C. 78S(b)(2).

[4] 17 CFR 200.30-3(a)(12).

application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-21081 Filed 9-3-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18288; 812-7665]

Piper Jaffray Investment Trust, Inc.; Notice of Application

August 26, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Piper Jaffray Investment Trust, Inc.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the 1940 Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an amended order of the SEC permitting it (1) to extend for certain series of applicant the holding period which will be required to avoid assessment of a contingent deferred sales charge ("CDSC"); (2) to permit the imposition and waiver of the CDSC as provided in the prior order, with certain modifications; (3) to waive the CDSC in certain additional situations; and (4) to provide a credit for any CDSC paid in connection with the redemption of shares followed by a reinvestment effected within a specified time of such redemption.

FILING DATE: The application was filed on December 24, 1990 and amended on July 2, 1991 and August 14, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 23, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, at (202) 272-7324, or Jeremy N. Rubenstein, Assistant Director, 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 may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company organized under the laws of the State of Minnesota. Piper Jaffray & Hopwood incorporated (the "Distributor") is a registered broker-dealer under the Securities Exchange Act of 1934 and serves as the principal underwriter for applicant.

2. Applicant has one class of capital stock that is currently offered for sale in eleven separate series. Three of such series are offered to the public at their net asset value with no sales charge. The other eight series (individually "Fund", and collectively the "Funds") are offered for sale at net asset value plus a traditional front-end sales load ("FESL") on transactions involving less than $500,000 (or such other amount as agreed to by the Distributor and applicant from time to time). For purchases of $500,000 or more, applicant imposes no FESL. For purchases of at least $500,000 but less than $1,000,000, the Distributor pays its investment executives and other broker-dealers a fee in connection with such purchases of up to 1.00% of the offering price (.75% in the case of the Institutional Government Income Portfolio ("IGIP")), which fee may be revised by the Distributor from time to time. Such payments by the Distributor are not reimbursable under applicant's Rule 12b-1 plan.

3. On June 6, 1990, the SEC granted an order (the "Prior Order") permitting the applicant to assess a CDSC on certain redemptions and to waive the CDCS in certain situations. Investment Company Act Release No. 14915 (June 6, 1990). In reliance on the Prior Order, applicant pays the Distributor a CDSC from the proceeds of certain redemptions of shares initially sold without an FESL. The CDSC is imposed in the event of a redemption transaction occurring within a specified period of time following the share purchase and is equal to 1% (.5% for IGIP) of the lesser of (a) the net asset value of such shares at the time of purchase, or (b) the net asset value of the shares at the time of redemption.

4. No CDSC is imposed when the investor redeems (a) shares held for more than the required holding period, (b) amounts representing an increase in the value of Fund shares due to capital appreciation, or (c) shares purchased through reinvestment of dividends or capital gains distributions. In determining whether a CDSC is payable, shares, or amounts representing shares, that are not subject to any CDSC will be redeemed first, and other shares or amounts will then be redeemed in the order purchased.

5. Applicant assists in financing the distribution of its shares pursuant to a plan adopted under rule 12b-1 of the 1940 Act. The CDSC is completely separate and independent from applicant's rule 12b-1 plan. Amounts received by the Distributor under the rule 12b-1 plan are not reduced or offset by the CDSC retained by the Distributor. However, applicant's Board of Directors, in its periodic review of the rule 12b-1 plan, considers the effect of the CDSC. Applicant is not seeking relief with respect to, or SEC review of, its rule 12b-1 plan.

6. Applicant proposes to amend the Prior Order (a) to extend for certain series of applicant the holding period which will be required to avoid assessment of a CDSC; (b) to permit the imposition and waiver of the CDSC as provided in the Prior Order, with certain modifications; (c) to waive the CDSC in certain additional situations; and (d) to provide a credit for any CDSC paid in connection with the redemption of Fund shares followed by a reinvestment effected within a specified time of such redemption.

7. Applicant currently imposes a CDSC in the event of a redemption transaction occurring within 18 months following a share purchase (24 months for IGIP). Applicant proposes to amend the Prior Order to increase the required holding period to 24 months for all Funds. Any shareholders purchasing shares prior to the granting of the amended order and supplementing of the Funds' prospectuses to reflect the extended holding period would be

required to hold Fund shares for only 18 months (24 months for IGIP).

8. Applicant currently waives the CDSC on the redemption of shares in the event of a lump sum distribution from a benefit plan subject the Employee Retirement Income Security Act of 1974 ("ERISA") and systematic withdrawals from ERISA plans if the shareholder is at least 59½ years old. Applicant believes that this current waiver is overly broad because it covers ERISA plans which are not subject to favored tax treatment under the Internal Revenue code (the "Code"). Applicant proposes to amend the Prior Order such that the CDSC will be waived on the redemption of shares in the event of (a) a lump sum distribution from an employee benefit plan qualified under section 401(a) of the Code, an individual retirement account under section 408(a) of the Code, or a simplified employee pension plan under section 408(k) of the Code; (b) systematic withdrawals from any of such plans if the shareholder is at least 59½ years old; and (c) a tax-free return of the excess contribution to an individual retirement account under section 408(a) of the Code. The broader waiver provisions currently in place would continue to apply with respect to shares purchased prior to granting of the amended Order and supplementing of the series prospectuses.

9. Applicant proposes to amend the Prior Order to permit the waiver of the CDSC in connection with the following: (a) Purchases of Fund shares by investment advisory clients of Piper Capital Management Incorporated and its affiliate Piper Jaffray Trust Company; and (b) purchases of Fund shares through an investment executive of the Distributor to the extent such purchases are funded by the proceeds from the sale of shares of any open-end mutual fund other than a money market fund, provided there was no deferred sales load, fee or other charge imposed in connection with such sale. Applicant will take such steps as may be necessary to determine that the shareholder has not paid a deferred sales load, fee, or other charge in connection with the redemption of shares of such unrelated open-end investment company, including, without limitation, requiring the shareholder to provide a written representation that neither a deferred sales load, fee, nor other charge was imposed upon the redemption and, in addition, either requiring such shareholder to provide an activity statement reflecting the redemption that supports the shareholder's representation or reviewing a copy of the current prospectus of the unrelated open-end investment company and determining that such company does not impose a deferred sales load, fee, or other charge in connection with the redemption of shares. In order to exercise the privilege set forth in this clause (b), an order for Fund shares must be received by the Distributor within 30 days after the redemption of shares of the other fund.

10. Applicant proposes to amend the Prior Order to provide a *pro rata* credit for any CDSC paid in connection with a redemption of Fund shares followed by a reinvestment in any Fund charging an FESL effected within 30 days (120 days for IGIP) of the redemption. Such reinvestment will be allowed at net asset value without the payment of an FESL, irrespective of the amount of the reinvestment. Further, the Distributor will refund to the reinvesting shareholder the CDSC received by the Distributor in connection with the previous redemption of shares having an equal net asset value. Finally, such reinvested amount shall be subject to the same *pro rata* CDSC that was applicable to the earlier investment; provided, however, that the period during which such CDSC applies shall be extended by the number of days between the redemption and the reinvestment dates (inclusive).

11. Applicant requests that the relief extend to all of its future series offered at net asset value plus a sales charge and any open-end registered investment companies which may hereafter be advised by Piper Capital Management Incorporated and which is in the same group of investment companies, as defined in rule 11a–3 under the 1940 Act.

Applicant's Legal Conclusions

1. Applicant asserts that the proposed limitations on the waiver of the CDSC for retirement plan distributions are justified on basic considerations of fairness. In each situation in which the charge would be waived, the redeeming shareholder is a member of a class of shareholders which is favored under the tax laws, and in fairness such redeeming shareholder should not be penalized by the imposition of a sales charge. The current waiver under the Prior Order is overly broad and would apply in certain circumstances to shareholders who are not favored under the tax laws. Any shareholder who purchased under the current waiver would be protected since the broader waiver provisions would continue to apply with respect to shares purchased prior to the granting of the amended order and the supplementing of the Funds' prospectuses.

2. Applicant asserts that the requested waiver of the CDSC in connection with certain purchases by individual retirement accounts and simplified employee pension plans is also justified on basic considerations of fairness. Waivers in these circumstances are fully consistent with the Code's provisions granting favored tax treatment to accumulations under such types of plans. The requested waiver benefits the remaining shareholders by encouraging retirement plan investments. These large investments benefit shareholders by considerably increasing applicant's asset base and average shareholder account size. This in turn reduces applicant's operating expenses.

3. In addition, applicant submits that it is fair to waiver the CDSC with respect to shares sold to investment advisory clients of Piper Capital Management Incorporated and its affiliate Piper Jaffray Trust Company. Applicant's belief is based on the fact taht such shares are sold with little or no selling expenses.

4. Applicant also asserts that it is fair to waive the CDSC with respect to share purchases funded by the proceeds from the sale of shares of any open-end mutual fund other than a money market fund, provided there was no deferred sales load, fee or other charges imposed in connection with such sale. Applicant believes such a waiver will allow investors to move to a mutual fund with investment objectives and policies that have become more appropriate for the investors, whether as a result of market change or changes in an investor's personal situation, without the investor having to pay an additional sales charge and dilute his or her equity. By requiring that there be no deferred sales load, fee or other charge imposed in connection with the sale of shares of the unrelated rund, applicant would comply with the requirement under section 11(a) of the 1940 Act that any exchange must be made on the basis of relative net asset value.

5. Applicant submits that, like the proposed waivers of the CDSC, the proposed credit of the CDSC applicable to a shareholder who redeems Fund shares subject to the charge and reinvests the proceeds of the redemption within 30 days of the redemption (120 days for IGIP) is in the interest of shareholders. Applicant notes that this practice is also fully consistent with the scope of reduced or waived sales charges permitted under rule 22d–1. Applicant, like many mutual funds, permits the redeemed shareholder to reinvest in a Fund within 30 days (120 days for IGIP) without paying an initial sales charge pursuant to the provision of rule 22d–1. This allows investors who

erroneously redeemed or otherwise had second throughts about having redeemed their shares to reinvest the proceeds without reincurring the sales load. The credit proposed by applicant is consistent therewith.

6. Applicant does not believe that any of its analyses changes with the lengthening of the holding period for the Funds other than IGIP from 18 to 24 months.

Applicant's Condition

Applicant agrees that any relief will be subject to the following condition:

1. Applicant will comply with the provisions of proposed rule 6c–10 under the 1940 Act as currently stated or as it may be adopted or modified in the future.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–21143 Filed 9–3–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1465]

Advisory Committee on International Investment; Meeting

The Department of State will hold a meeting of the Advisory Committee on International Investment on September 26, 1991 from 9 a.m. to 12:15 p.m. The meeting will be held in room 1107 at the Department of State, 2201 "C" Street, NW., Washington, DC 20520.

This meeting will deal with the USSR Bilateral Investment Treaty, The Investment Chapter of the North American Free Trade Agreement, Post Uruguay Round Investment Issues, Investment and Multilateral Environmental Agreements.

Access to the Department of State is controlled and seating is limited. Therefore, members of the public wishing to attend the meeting must notify the Office of Investment Affairs at (202) 647–1128 to arrange clearance for admittance no later than five days before the meeting. An identification with a photograph, name, date of birth and Social Security number will be required. All attendees should use the "C" Street entrance.

Dated: August 21, 1991.

Daniel T. Fantozzi,

Executive Secretary, Advisory Committee, Office of Investment Affairs.

[FR Doc. 91–21054 Filed 9–3–91; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1463]

Shipping Coordinating Committee, International Cruise Ship Industry; Meeting

The United States Coast Guard Ship Design Branch will conduct an open meeting on September 12, 1991 at 9 a.m. in room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. The purpose of the meeting will be to discuss the outcome of the 36th Session of the International Maritime Organization (IMO) Subcommittee on Fire Protection (FP), held on June 24–28, 1991. The meeting will focus on proposed amendments to SOLAS for new and existing passenger ships.

Members of the public may attend up to the seating capacity of the room. For further information regarding the meeting of the SOLAS Working Group on Fire Protection (September 12, 1991) contact Mr. Jack Booth at (202) 267–2997.

Dated: August 20, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91–21055 Filed 9–3–91; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1467]

State Department Performance Review Board Members

In accordance with section 4314(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Executive Resources Board of the Department of State has appointed the following members to the State Department Performance Review Board register.

Martin Prochnik, Director for Science and Technology Affairs, Bureau of Oceans and International Environmental and Scientific Affairs

Bowman H. Miller, Office Director for Office of Analysis for Western Europe and Canada, Bureau of Intelligence and Research

T. Michael Peay, Assistant Legal Adviser for Inter-American Affairs, Office of the Legal Adviser

Arthur L. Freeman, Director for Interagency Affairs Staff, Bureau of Diplomatic Security

Marijane Eastman Peplow, Public Member

Dated: August 18, 1991.

Edward J. Perkins,

Director General of the Foreign Service and Director of Personnel.

[FR Doc. 91–21056 Filed 9–3–91; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 21–29, Reporting Suspected Unapproved Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Advisory Circular 21–29, Reporting Suspected Unapproved Parts. Advisory Circular 21–29, provides information and guidance to the general public and aviation industry for use in reporting suspected unapproved aircraft parts. This AC also introduces FAA Form 8120–11, Suspected Unapproved Parts Notification, which provides a standardized method of reporting suspected unapproved parts to the FAA.

ADDRESSES: Copies of AC 21–29 can be obtained from the following: Federal Aviation Administration, Department of Transportation, Utilization and Storage Section, M443.2, 400 Seventh Street, SW., Washington, DC 20591.

Issued in Washington, DC, on August 27, 1991.

Dana D. Lakeman,

Assistant Manager, Aircraft Manufacturing Division.

[FR Doc. 91–21095 Filed 9–3–91; 8:45 am]

BILLING CODE 4910–13–M

General Aviation Operations Subcommittee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration General Aviation Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on September 19, 1991, at 1 p.m., continuing on September 20 at 9 a.m.

ADDRESSES: The meeting will be held in Conference Room 5AB, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Myres, Executive Director, General Aviation Operations Subcommittee, Flight Standards Service (AFS–850), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–8150; FAX: (202) 267–5230.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463;

5 U.S.C. app. II), notice is hereby given of a meeting of the General Aviation Operations Subcommittee to be held on September 19 and 20, 1991, at the FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591. The agenda for this meeting will include progress reports from the IFR Fuel Reserve, Instrument Currency, Minimum Safe Operating Altitude, Definition of Emergencies, North Atlantic Minimums, and Experimental/Restricted Category Operations Working Groups.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Because of increased security in Federal buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Issued in Washington, DC, on August 28, 1991.

Ron Myres,

Executive Director, General Aviation Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-21096 Filed 9-3-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 27, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535-0048.
Form Number: PD F 385.
Type of Review: Reinstatement.
Title: Certificate of Identity of Owner of Registered Securities.

Description: This form is executed by a person who does not have an interest in the registered securities. The form collects information necessary to establish the identity of the owner of U.S. Registered Securities who has identified himself or herself by more than one name or in more than one form.

Respondents: Individuals or households.

Estimated Number of Respondents: 177.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 89 hours.

OMB Number: 1535-0063.
Form Number: PD F 4239.
Type of Review: Reinstatement.
Title: Request by Owner or Person Entitled to Payment or Reissue of United States Savings Bonds/Notes Deposited in Safekeeping When Original Custody Receipts Are Not Available.

Description: This form is to identify the securities involved, establish entitlement, and obtain a certified request for payment or reissue. Without the information, the transaction cannot be completed.

Respondents: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Response: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 84 hours.

Clearance Officer: Rita DeNagy (202) 447-1315, Bureau of the Public Debt, room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239-0001.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-21102 Filed 9-3-91; 8:45 am]

BILLING CODE 4810-40-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 28, 1991.

The Department of Treasury has submitted the following public information collection requirements(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

ACTION: Notice of correction to Internal Revenue Service (IRS). Information collection request. The following notice corrects public notification of an IRS request for OMB review for 1545-1069 (FR Doc. 91-20462 Filed 8-26-91 8:45 a.m.), which incorrectly requested extension of the expiration date for IRS form 1099-R. Even though this form is cleared under the name docket number, the request for extension should have been for the associated regulation, EE-175-86. The correction is as follows.

Internal Revenue Service

OMB Number: 1545-1069.
Form Number: None.
Type of Review: Extension.
Title: Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans.

Description: The IRS needs this information to insure companies with sections 401(k), 401(m), and 4979 of the Internal Revenue Code. Certain additional taxes may be imposed if sections 401(k) and 401(m) are not complied with.

Respondents: State or local governments, farms, businesses or other for-profit, non-profit institutions, small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 5,500.

Extimated Burden Hours Per Respondent/Recordkeeper: 2 hours, 6 minutes.

Frequency of Response: Annually (once for some employers).

Estimated Total Reporting/ Recordkeeping Burden: 1,060,000 hours.

Clearance Officer: Garrick Shear (202) 535-4297; Internal Revenue Service, room 5571; 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880; Office of Management and Budget; room 3001, New Executive Office Building; Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-21103 Filed 9-3-91; 8:45 am]

BILLING CODE 4830-01-M

Office of Thrift Supervision

Atascosa Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Atascosa Federal Savings Bank, Jourdanton, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 2, 1991.

Dated: August 28, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-21064 Filed 9-3-91; 8:45 am]

BILLING CODE 6720-01-M

Citizens Security Bank, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Citizens Security Bank, F.A., Borger, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 16, 1991.

Dated: August 28, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-21069 Filed 9-3-91; 8:45 am]

BILLING CODE 6720-01-M

Executive Banc Savings Association, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Executive Banc Savings Association, F.A., New Braunfels, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 8, 1991.

Dated: August 28, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-21072 Filed 9-3-91; 8:45 am]

BILLING CODE 6720-01-M

The Federal Savings Bank, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for The Federal Savings Bank, F.A., Arlington, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 8, 1991.

Dated: August 28, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-21070 Filed 9-3-91; 8:45 am]

BILLING CODE 6720-01-M

First Savings Bank of New Orleans, F.S.B., Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Savings Bank of New Orleans, F.S.B., New Orleans, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 26, 1991.

Dated: August 28, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-21067 Filed 9-3-91; 8:45 am]

BILLING CODE 6720-01-M

First Savings Bank of Hempstead, F.S.B., Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Savings Bank of Hempstead, F.S.B., Hempstead, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 26, 1991.

Dated: August 28, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-21073 Filed 9-3-91; 8:45 am]

BILLING CODE 6720-01-M

Hidalgo Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Hidalgo Federal Savings and Loan Association, Edinbury, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 8, 1991.

Dated: August 28, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-21075 Filed 9-3-91; 8:45 am]

BILLING CODE 6720-01-M

Jennings Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Jennings Federal Savings Association, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 2, 1991.

Dated: August 28, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-21068 Filed 9-3-91; 8:45 am]

BILLING CODE 6720-01-M

Jonesboro Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as conservator for Jonesboro Federal

Savings Association, Jonesboro, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 16, 1991.

Dated: August 28, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-21065 Filed 9-3-91; 8:45 am]

BILLING CODE 6720-01-M

Nowlin Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Nowlin Federal Savings Association, North Richland Hills, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 16, 1991.

Dated: August 28, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-21076 Filed 9-3-91; 8:45 am]

BILLING CODE 6720-01-M

People's Homestead Savings Bank, F.S.B.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for People's Homestead Savings Bank, F.S.B., Monroe, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 2, 1991.

Dated: August 28, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-21071 Filed 9-3-91; 8:45 am]

BILLING CODE 6720-01-M

Peoples Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Peoples Federal Savings Association, Bay St. Louis, Mississippi ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 8, 1991.

Dated: August 28, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-21074 Filed 9-3-91; 8:45 am]

BILLING CODE 6720-01-M

Timberland Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Timberland Federal Savings Association, Nacogodoches, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 2, 1991.

Dated: August 28, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-21066 Filed 9-3-91; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Programs of Undergraduate Exchange with the U.S.S.R., Central and Eastern Europe

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions to conduct exchanges of undergraduate students with Albania, Bulgaria, the Czech and Slovak Federal Republic, Hungary, Poland, Romania, the Soviet Union (including the Baltic States) and Yugoslavia. These exchanges represent part of the activities of the President's University Undergraduate Exchange (the 1000–1000 Student Exchange) and the Samantha Smith Memorial Exchange Program and are subject to the availability of funding for Fiscal Year 1992.

Support is offered for three categories of exchange programs: Category A, the President's University Undergraduate Exchange with the U.S.S.R.; Category B, the Samantha Smith Memorial Exchange with the U.S.S.R.; and Category C, the Samantha Smith Memorial Exchange with East and Central Europe. Each category has separate conditions and requirements, which are stated in this announcement. Institutions may compete in any or all of the three categories. Institutions applying under any or all categories must follow the requirements stipulated in this RFP, the application guidelines, and any additional material specific to a given category. Failure to do so may result in a proposal being deemed technically ineligible. Programs and projects must conform with all Agency requirements and guidelines as well, and are subject to final review by a USIA contracting officer. Applications for substantive, undergraduate, academic exchanges will be accepted from accredited, degree-granting U.S. universities or colleges, consortia of such universities and colleges, university systems, and not-for-profit organizations engaged in international educational exchange programs. Proposals must be for study programs for which academic credit is given.

DATES: Deadline for proposals: For Categories A and B, all copies must be received at the U.S. Information Agency by 5 p.m. e.d.t. on Wednesday, October 16, 1991; for Category C, proposals must be received at the U.S. Information Agency by 5 p.m. e.s.t. on Friday, November 1, 1991. Faxed documents will not be accepted, nor will documents postmarked on the deadline date but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the appropriate deadline. Programs may not begin prior to August 1, 1992, or they will be deemed technically ineligible. No funds may be expended until the grant agreement is signed with USIA's Office of Contracts.

ADDRESSES: The original and 20 complete copies (except for the documentation of institutional commitment, see below) of the application, including required forms, should be addressed as follows: U.S. Information Agency, Reference: Category _____; Title of USIA Exchange, Office of the Executive Director, E/X room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION: Interested U.S. organizations should write or call: Ted Kniker or Deborah Trent, U.S.

Information Agency, 301 4th Street, SW., European Branch, Academic Exchanges Division, E/AEE room 208, Washington, DC 20547; telephone (202) 619–5341, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, formats, guidelines for preparing proposals, and for other technical information.

SUPPLEMENTARY INFORMATION: Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

Category A: President's University Undergraduate Exchange (the 1000–1000 Student Exchange Program) with the Soviet Union

Grant funding under this category is intended to enhance and expand the scope of U.S. academic exchanges with the U.S.S.R. (including the Baltic States) for undergraduate students. Participants must be citizens either of the U.S. or of the U.S.S.R. Both existing and new projects are eligible. These exchanges are to be conducted in accordance with the Agreement between the United States of America and the Union of Soviet Socialist Republics on Expansion of Undergraduate Exchanges, signed in Washington, DC on June 1, 1990 and in accordance with the Protocol for the Program of Expansion of Undergraduate Exchanges between the United States of America and the Union of Soviet Socialist Republics. The purpose of this program is to increase undergraduate exchanges between the United States and the Soviet Union. For the academic year 1992–93 the intention is to increase the level by 350 students in each direction over the FY 89 base level. Students should not have received their baccalaureates prior to participation in this program. Students in all academic fields are eligible; students of agriculture are to be especially encouraged to apply (please note special conditions for agriculture programs below).

Language Qualifications: Undergraduate students should have sufficient fluency in the language of the country (or of the republic) to be able to pursue university study in that language and to be able to converse with citizens of the country without the aid of interpreters. Generally, the equivalent of two years of college-level study is considered the minimum.

Duration: Applications will be accepted for projects from at least eight weeks to no more than an academic year's duration, including programs lasting an academic quarter, trimester, or semester. Exchanges of less than eight weeks duration or more than one full academic year will be considered technically ineligible. The duration of the grant period should be from six to 18 months. Programs may not begin earlier than August 1, 1992 and should be completed by August 31, 1993. Programs for exchanges in subsequent academic years will be considered technically ineligible. Preference will be given to proposals in which incoming students study in the U.S. for a full academic year.

Institutional Commitment: Proposals must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign institutions' presidents, chancellors, or directors, or in the form of a signed agreement by the same persons. The documentation must describe each institution's commitment and activities in support of an on-going partner linkage and make specific reference to the proposed program and each institution's activities in support of that program. Applicants must submit this documentation by 5 p.m. EST on Friday, November 15, 1991 to Ted Kniker or Deborah Trent, E/AEE Room 208, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, if the documentation is not included with the proposal. Organizations not submitting institutional commitment documentation with the proposal must describe in the proposal the measures taken to secure the documentation. Applying institutions are expected to make their own arrangements with the appropriate Soviet institutions.

Preference will be given to exchanges with institutions located outside the capital cities overseas that have not participated in academic exchanges with U.S. institutions.

Reciprocity: Proposals must be reciprocal in nature, providing for an approximately equal number of American and Soviet students. Proposals should provide detailed information on the activities in both the U.S. and the U.S.S.R.

Student Exchange Level: To be considered eligible for Category A funding, programs must exchange a minimum of 10 students in each direction. Applicants may wish to note that successful proposals from past competitions budgeted an average of $2,500 per participant as the cost to the Agency.

Orientation Programs: Participating students should be provided with a substantive and comprehensive orientation to the country of their visit, and proposals should describe these programs, including costs, in detail.

Special Allowances for Agriculture Programs: In order to give added encouragement to the participation of students of agriculture as provided for in the bilateral agreement, language standards may be modified for participating students of agriculture. In addition, programs in which 50 percent or more of the participants are studying agriculture need not exchange the required minimum of ten students in each direction; however, all projects must be reciprocal. Programs including agriculture students need not exchange agriculture students in both directions.

Allowable Costs for Category A

Projects: Project awards to U.S. institutions and organizations will be made in a wide range of amounts but will not exceed $75,000 except for consortia of three or more member colleges or universities, state university systems, or for organizations holding open, national competitions. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000, and proposed budgets should not exceed this amount. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet. Grant-funded items of expenditure will be limited to the following categories:

—International Travel (via American flag carrier) for U.S. participants only;

—Domestic travel for Soviet participants only;
—Exclusionary travel and lodging for cultural enrichment (not to exceed $200.00 per participant);
—Maintenance and per diem;
—Academic program costs (e.g. tuition, book allowance);
—Travel and partial maintenance costs (not to exceed 50% of U.S. Government per diem rates for stays of 30 days or less, or 35% for stays over 30 days) for accompanying faculty or resident directors; for no more than one program supervisor per twenty students;
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);
—Cultural enrichment expenses (admissions, tickets, etc.; limited to $150 per participant);
—Medical insurance for participants;
—Administration (salaries, benefits, communications, other direct and indirect costs);

Please Note: It is required that requested administrative funds not exceed 20 percent of the total amount requested, including administrative expenses for orientation; administrative expenses should be cost-shared.

—Application should demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including tuition waivers and overseas partner contributions.

Category B: Samantha Smith Memorial Exchange/The U.S.S.R.

Grant funding under this category is intended to enhance and expand the scope of U.S. academic exchanges with the U.S.S.R. (including the Baltic States) for undergraduate students under the age of 26. Participants must be citizens either of the U.S. or of the U.S.S.R. Both existing and new projects are eligible. Programs designed specifically for U.S. teacher preparation in foreign language/area studies and/or programs in which foreign participants teach their native language or area studies in American institutions are ineligible for support.

Language Qualifications: It is desirable, but not required, that undergraduate students have sufficient fluency in the language of the country to be visited for the pursuit of university study in the language and to converse with citizens of the country without the aid of interpreters. Preference will be given to programs in which U.S. participants will have had a minimum of two years of relevant language study.

Duration: Applications will be accepted for projects of at least twelve weeks duration. Projects of less than twelve weeks duration will be considered technically ineligible. Grants generally will be made for exchanges occurring within a twelve-month period. Preference will be given to proposals in which incoming students study in the U.S. for an academic year.

Institutional Commitment: Proposals must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign institution's presidents, chancellors, or directors, or in the form of a signed agreement by the same persons. The documentation must describe each institution's commitment and activities in support of an on-going partner linkage and make specific reference to the proposed program and each institution's activities in support of that program. Applicants must submit this documentation by 5 p.m. EST on Friday, November 15, 1991 to Ted Kniker or Deborah Trent, E/AEE Room 208, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, if the documentation is not included with the proposal. Organizations not submitting institutional commitment documentation with the proposal must describe in the proposal the measures taken to secure the documentation. Applying institutions are expected to make their own arrangements with the appropriate Soviet institutions.

Preference will be given to exchanges with institutions located outside the capital cities overseas that have not participated in academic exchanges with U.S. institutions.

Reciprocity: Preference will be given to reciprocal exchanges, although two-way programs are not a requirement. It is desirable, but not required, that the number of U.S. and foreign participants be nearly equal. The proposal should provide detailed information on the activities in both the U.S. and the partner country.

Orientation Programs: Participating students should be provided with a substantive and comprehensive orientation to the country of their visit, and proposals should describe these programs, including costs, in detail.

Allowable Costs for Category B

Projects: Project awards will be made in a wide range of amounts but will not exceed $60,000. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet. Grant-funded items of expenditure will be limited to the following categories:

—International Travel (via American flag carrier) for students;
—Domestic travel for students;
—Excursionary travel and lodging for cultural enrichment (not to exceed $200.00 per participant);
—Maintenance and per diem for students;
—Academic program costs (e.g. tuition, book allowance);
—Travel and partial maintenance costs (not to exceed 50% of U.S. Government per diem rates for stays of 30 days or less or 35% for stays over 30 days) for accompanying faculty or resident directors; for no more than one program supervisor per twenty students;
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);
—cultural enrichment expenses (admissions, tickets, etc.; limited to $150 per participant);
—Medical insurance for participants;
—Administration (salaries, benefits, communications, other direct and indirect costs);

Please Note: It is required that requested administrative funds not exceed 20 percent of the total amount requested, including administrative expenses for orientation; administrative expenses should be cost-shared.

—Application should demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including tuition waivers and overseas partner contributions.

Category C: Samantha Smith Memorial Exchange/Central and Eastern Europe

Grant funding under this category is intended to enhance and expand the scope of U.S. academic exchanges with Albania, Bulgaria, the Czech and Slovak Federal Republic, Hungary, Poland, Romania and Yugoslavia for undergraduate students under the age of 26. Participants must be citizens either of the U.S. or the partner country. Both existing and new projects are eligible. Programs designed specifically for U.S. teacher preparation in foreign language/area studies and/or programs in which foreign participants teach their native language or area studies in American institutions are ineligible for support.

Language Qualifications: It is desirable, but not required, that undergraduate students have sufficient fluency in the language of the country to be visited for pursuit of university study in the language and to converse with citizens of the country without the aid of interpreters.

Duration: Applications will be accepted for projects of at least twelve weeks duration. Projects of less than twelve weeks duration will be

considered technically ineligible. Grants will generally be made for exchanges occurring within a 12-month period. Preference will be given to proposals in which incoming students study in the U.S. for an academic year.

Institutional Commitment: Proposals must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign institutions' presidents, chancellors, or directors, or in the form of a signed agreement by the same persons. The documentation must describe each institution's commitment and activities in support of an on-going partner linkage and make specific reference to the proposed program and each institution's activities in support of that program. Applicants must submit this documentation by 5 p.m. EST on Friday, November 15, 1991 to Ted Kniker or Deborah Trent, E/AEE Room 208, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, if the documentation is not included with the proposal. Organizations not submitting institutional commitment documentation with the proposal must describe in the proposal the measures taken to secure the documentation. Applying institutions are expected to make their own direct arrangements with the appropriate Central and East European institutions.

Preference will be given to exchanges with institutions located outside the capital cities overseas that have not participated in academic exchanges with U.S. institutions.

Reciprocity: Preference will be given to reciprocal exchanges, although two-way programs are not a requirement. It is desirable, but not required, that the number of U.S. and foreign participants be nearly equal. The proposal should provide detailed information on the activities in both the U.S. and the partner country.

Orientation Programs: Participating students should be provided with a substantive and comprehensive orientation to the country of their visit, and proposals should describe these programs, including costs, in detail.

Allowable Costs for Category C

Projects: Project awards will be made in a wide range of amounts but will not exceed $60,000. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet. Grant-funded items of expenditure will be limited to the following categories.

—International Travel (via American flag carrier) for students;
—Domestic travel for students;
—Excursionary travel and lodging for cultural enrichment (not to exceed $200.00 per participant);
—Maintenance and per diem for students;
—Academic program costs (e.g. tuition, book allowance);
—Travel and partial maintenance costs (not to exceed 50% of U.S. Government per diem rates for stays of 30 days or less or 35% for stays over 30 days) for accompanying facility or resident directors; for no more than one program supervisor per twenty students;
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);
—Cultural enrichment expenses (admissions, tickets, etc.; limited to $150 per participant);
—Medical insurance for participants;
—Administration (salaries, benefits, communications, other direct and indirect costs);

Please Note: It is required that requested administrative funds not exceed 20 percent of the total amount requested, including administrative expenses for orientation; administrative expenses should be cost-shared.

—Application should demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including tuition waivers and overseas partner contributions.

Application Notice

Please be advised; Proposals submitted by the same institution under Categories A and B may not be duplicative. Each proposal must sponsor different students and employ separate budgets. Proposals not adhering to this restriction will be deemed technically ineligible and will not be reviewed for funding. Organizations applying for exchanges with the Soviet Union are encouraged to submit under one category. The Agency reserves the right to negotiate administrative costs.

Review Process (All Categories)

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet, including the Guidelines for Preparing Proposals [EAEE–92–01]. Eligibility proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's Office of General Council, the appropriate geographic area office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria (All Categories)

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of program plan, including academic rigor, thorough conception of project, demonstration of meeting student needs, contributions to understanding the partner country, proposed follow-up, and qualifications of program staff and participants.

b. Feasibility of the program plan and the capacity of the organization to conduct the exchange. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. Track record—relevant Agency and outside assessments of the organization's experience with international exchange; for organizations that have net worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier effect/impact—the impact of the exchange activity on the wider community and on the development of continuing ties, as well as the contribution of the proposed activity in promoting mutual understanding.

e. Value of U.S.-partner country relations—the assessment by USIA's geographic area office of the need, potential impact, and significance of the project with the partner country.

f. Cost effectiveness—greatest return on each grant dollar; degree of cost-sharing exhibited.

g. Diversity and pluralism—preference will be given to proposals that demonstrate efforts to provide for the participation of students with a variety of major disciplines, from diverse regions, and of different socio-economic and ethnic backgrounds, to the extent feasible for the applicant institutions.

h. Adherence of proposed activities to the criteria and conditions described below.

i. Institutional commitment as demonstrated by financial and other support to the program.

j. Follow-on Activities—proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

k. Evaluation plan—proposals should provide a plan for evaluation by the grantee institution.

Additional Criterion (Category A)

Adherence of proposed activities to the conditions set forth in the "Protocol for the Program of Expanded Undergraduate Exchange" between the United States of America and the Union of Soviet Socialist Republics, as well as the criteria enumerated above.

Application Disclaimer (All Categories)

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this request for proposals does not constitute an award commitment on the part of the government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants for Categories A and B will be notified in writing of the results of the review process on or about April 30, 1992. All applicants for Category C will be notified in writing of the results of the review process on or about May 15, 1992. All funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: August 26, 1991.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-21157 Filed 9-3-91; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 171
Wednesday, September 4, 1991

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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 9, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 30, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–21307 Filed 8–30–91; 3:08 pm]

BILLING CODE 6210–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 2, 1991.

A closed meeting will be held on Thursday, September 5, 1991, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A), and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, September 5, 1991, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272–2100.

Dated: August 29, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–21258 Filed 8–30–91; 2:22 pm]

BILLING CODE 8010–01–

federal register

Wednesday
September 4, 1991

Part II

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL 3990-3]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes the standards and requirements for servicing of motor vehicle air conditioners, and restricts the sale of small containers of Class I and Class II substances, under section 609 of the Clean Air Act as amended (Act). Specifically, the proposed regulations require persons who repair or service motor vehicle air-conditioning units for consideration to be certified in refrigerant recovery and recycling and to properly use certified equipment when performing service. Finally, the proposed regulations prohibit the sale of containers of Class I and Class II substances under 20 pounds except to certified technicians.

DATES: Written comments on the proposed rule must be received on or before October 21, 1991. A public meeting is scheduled for September 3, 1991 from 1–5 p.m. in the EPA Auditorium, 401 M Street SW., Washington, DC to receive comment.

ADDRESSES: Materials relevant to this proposed rulemaking are contained in Public Docket No. A–91–41. This docket is located in Room M–1500, Waterside Mall (Ground Floor), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Dockets may be inspected from 8 a.m. until 12 noon, and from 1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Lena Nirk, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR–445, 401 M Street SW., Washington, DC 20460. (202) 382–7411.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
  A. Statutory Authority
  B. Ozone Depletion
  C. Montreal Protocol
  D. Excise Tax
  E. London Amendments
  F. Advance Notice of Proposed Rulemaking
  G. Clean Air Act Amendments of 1990
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I. Background

A. Statutory Authority

Section 609 of the Act requires the Administrator to promulgate regulations establishing standards and requirements regarding the servicing of motor vehicle air conditioners. Title VI of Act is designed to protect the stratospheric ozone layer.

B. Ozone Depletion

The stratospheric ozone layer protects the earth from the penetration of ultraviolet (UV–B) radiation. A national and international consensus exists that chlorofluorocarbons (CFCs), halons, carbon tetrachloride and methyl chloroform must be restricted because of the risk of depletion of the stratospheric ozone layer through the release of chlorine and bromine. To the extent depletion occurs, penetration of UV–B radiation increases, resulting in potential health and environmental harm including increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to plants, including crops, and aquatic organisms, increased formation of ground-level ozone and increased weathering of outdoor plastics. (See 53 FR 30566 for more information on the effects of ozone depletion.)

The original theory linking CFCs to ozone depletion was first proposed in 1974. Since then, the scientific community has made remarkable advances in understanding atmospheric processes affecting stratospheric ozone science. Model predictions in the late 1980s suggested that continued use of CFCs would lead to substantial ozone depletion in the middle of the next century. Despite the sophistication of these models, scientists were unable to predict the extent of the decrease in stratospheric ozone over Antarctica that was observed in 1985. This seasonal loss of ozone over the south pole became known as the "Antarctic ozone hole". In 1989, the results of an international assessment of ozone trends were published in the Ozone Trends Panel Report. In addition to the ozone hole, this report stated that analysis of total-column ozone data shows measurable downward trends from 1969 to 1988 of 3 to 5 percent in the northern hemisphere in the winter. In early 1991, new scientific evidence indicated a loss of stratospheric ozone over the northern mid-latitudes during the past decade of 3 to 5 percent. This amount is 2 times greater than past studies suggested and illustrated the concern that ozone depletion appears to be occurring faster than theoretical models had predicted.

C. Montreal Protocol

In September 1987, the United States and 22 other countries signed the Montreal Protocol on Substances that Deplete the Ozone Layer. As originally drafted, the Protocol called for production and consumption of the most ozone-depleting CFCs (CFC –11, 12, 113, 114, 115) and Halon–1211, –1301 and –2402 to be frozen at 1986 levels beginning July 1, 1989 and January 1, 1992 respectively, and for the CFCs to be reduced to 50 percent of 1986 levels by 1998. To date, 68 nations representing well over 90% of the world's production capacity have signed the Montreal Protocol. EPA promulgated regulations implementing the requirements of the 1987 Protocol through a system of tradable allowances. EPA apportioned the allowances to producers and importers of ozone depleting substances (controlled substances) based on their 1986 level of production and importation. It then reduced the allowances for the controlled substances according to the schedule specified in the Protocol.

D. Excise Tax

As part of the Omnibus Budget Reconciliation Act of 1989, the U.S. Congress levied an excise tax on the sale of CFCs and other chemicals that deplete the ozone layer, with specific exemptions for exports and recycling. The tax has operated as a complement to EPA's regulations limiting production and consumption by increasing the costs of using virgin controlled substances. As a result of the tax, there is an added incentive for industry to shift out of controlled substances and to increase recycling activities. The tax has also stimulated the market for alternative chemicals and processes. The original excise tax was amended in 1991 to include methyl chloroform, carbon tetrachloride and other CFCs regulated by the amended Montreal Protocol and Title VI of the Clean Air Act.

E. London Amendments

Since the signing of the Protocol in 1987, additional scientific evidence

became available indicating that depletion of the stratospheric ozone layer was occurring more quickly than had been anticipated. In response to this evidence (i.e. the 1989 Ozone Trends Panel Report), the Parties to the Protocol at their meeting in London in June 1990 amended the Protocol schedule for CFCs and halons to require a complete phaseout by January 1, 2000. Methyl chloroform and carbon tetrachloride were added to the list of ozone depleting substances, with carbon tetrachloride phased out by January 1, 2000 and methyl chloroform phased out by January 1, 2005.

The parties also passed a non-binding resolution regarding the use of hydrochlorofluorocarbon (HCFCs). HCFCs have been identified as the major interim substitutes for CFCs because they add much less chlorine to the stratosphere than fully halogenated CFCs. The Parties were concerned, however, that rapid growth in the amount of use of these chemicals over time would still pose a threat to the ozone layer. As a result, the resolution calls for the phaseout of HCFCs by 2020 if feasible and no later than 2040 in any case.

F. Advance Notice of Proposed Rulemaking

On May 1, 1990, EPA published an advance notice of proposed rulemaking (ANPRM, 55 FR 18256) addressing issues related to the development of a national recycling program. In the ANPRM, the Agency discussed the importance of recycling in providing immediate reductions in CFC emissions whenever production is below limits. When production is at or near production limits recycling has no effect on production and the ultimate release of CFCs, however, recycling may delay the release of CFCs. Recycling is also important for avoiding the cost of early retirement and retrofit of equipment requiring CFCs for service past the year 2000. Although the Agency continues to investigate destruction of these chemicals, at this time it believes that continuing to use these substances through recycling in existing equipment can serve as a useful bridge to alternative products while minimizing disruption in the utilization of the current capital stock of equipment for its full useful life.

The ANPRM provided the following definitions for recover, recycle and reclaim based on the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE) Proposed Guideline GPC–3P, "Guideline for Reducing Emission of Fully Halogenated Chlorofluorocarbon (CFC) Refrigerants in Refrigeration and Air-Conditioning Equipment and Applications," June 1989. These definitions are also used by the United Nations Environmental Program (UNEP). (See Technical Progress on Protecting the Ozone Layer: Refrigeration, Air Conditioning, and Heat Pumps Technical Options Report, July 1989.)

Recover: To remove refrigerant in any condition from a system and store it in an external container without necessarily testing or processing it in any way.

Recycle: To clean refrigerant for reuse by oil separation and single or multiple passes through moisture absorption devices, such as replaceable core filter-driers. This term usually implies procedures implemented at the field job site or at a local service shop.

Reclaim: To process refrigerant to new conditions, by means which may include distillation. It may require chemical analysis of contained refrigerant to determine that the appropriate process specifications are met. This term usually implies the use of processes or procedures available only at a reprocessing or manufacturing facility.

The ANPRM asked for comment on the feasibility of recycling in various CFC end uses and also asked for comment on methods, such as a deposit/refund system, that could be employed to establish a recycling program. The following sections give a brief overview of the general comments received on the importance of recycling and a description of the early efforts in mobile air conditioning recycling.

1. Public Comments

The Agency received 110 public comment letters in response to the ANPRM. In general, most commenters recognized the need for recycling to be established to help efforts to protect the ozone layer and to provide a source of supply to service existing capital equipment past the year 2000. Some commenters believed that a mandatory program would not be necessary because the tax and restricted supply would stimulate recycling. They also stated that recycling is not required under the Montreal Protocol. Other commenters, especially in the motor vehicle air conditioning (MAC) end use sector, stated that the market would not provide enough incentive for recycling in the short term if recycling was not made mandatory.

The Agency received several comments on deposit/refund systems which highlighted the difficulties in implementing such a system for refrigerants. The Agency will consider these comments and comments providing specific information on recycling in end uses other than motor vehicle air conditioning when developing the regulations implementing section 608 of the Act.

2. Early Efforts in MAC Recycling

The ANPRM described the cooperative project undertaken between EPA, the Mobile Air-Conditioning Society, the Motor Vehicle Manufacturers Association (MVMA), the Automotive Importers of America, the Society of Automotive Engineers (SAE), ASHRAE, manufacturers of recover/recycling equipment, automotive industry representatives, and environmental groups to develop recycling for MACs. Although each automobile has a relatively small refrigerant charge, it is estimated that motor vehicle air-conditioners consumed over 48,000 metric tons of CFC–12 in 1989. This amounts to 21.3 percent of total CFC use in the United States.

The industry recognized the need for the development of a standard of purity for recycled refrigerant for MACs to facilitate recycling on-site. As part of the cooperative project, EPA sponsored an engineering study to test the quality of used refrigerant in automobiles of different makes and models, operated in different geographical regions under various driving and weather conditions. Based on the study, industry and EPA representatives agreed that recycled refrigerant should be held to a standard of purity for oil and moisture contamination comparable to that of refrigerant in automobiles that have been driven approximately 15,000 miles with properly working air-conditioners. This standard has been published as "SAE J1991, Standard of Purity for Use in Mobile Air Conditioning Systems."

SAE has also published "SAE J1989, Recommended Service Procedure for the Containment of R–12 (CFC–12)" and "SAE J1990, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems" that reflect a consensus of industry experts on proper procedures and equipment specifications for recovery and recycling of refrigerant in mobile air conditioners. In an effort to assure that equipment used for recycling on-site performs adequately, Underwriters Laboratories Inc. (U.L.) worked with industry to develop a program to certify automotor vehicle air-conditioning recover/recycle equipment. This procedure, "U.L. 1963, Refrigerant Recovery and Recycling Equipment", specifies the ability to meet the purity standard, as well as other

aspects of product safety which must be demonstrated by equipment in order to be certified. Several manufacturers have submitted their equipment to U.L. and have received certification. Also, many automobile manufacturers already require use of certified recover/recycle equipment during maintenance by dealerships.

The ANPRM also recognized the need to certify the technicians who use the equipment. Comment was requested on the use of organizations such as the National Institute of Automotive Service Excellence (ASE) to perform this certification. Several commenters mentioned that certification of technicians in recycling was a necessary component to a successful recycling program and suggested several mechanisms for the development of programs.

G. Clean Air Act Amendments of 1990

The Clean Air Act Amendments of 1990 includes requirements for controlling ozone-depleting substances more stringent than those contained in the revised Montreal Protocol. For the substances covered by the revised Protocol's control measures, title VI of the Act calls for a 2000 phase-out for CFCs with deeper interim reductions and, in the case of methyl chloroform, an earlier phaseout date (2002 instead of 2005). For the HCFCs, title VI requires use restrictions, a production freeze in 2015 and a phaseout in 2030. EPA issued a temporary final rule on March 6, 1991 implementing the production and consumption limits contained in the Act for calendar year 1991. (See 56 FR 9518).

In addition to the phaseout of ozone depleting substances, title VI includes provisions to reduce emissions of all ozone-depleting substances. Section 608 contains requirements for a "lowest achievable level" of emissions of controlled substances during use and disposal of appliances and industrial process refrigeration and bans intentional venting at service and disposal. Section 609 requires standards for certification of technicians and for equipment used in the servicing of motor vehicle air conditioners and restricts the sale of small containers of CFCs. A ban on nonessential products and mandatory labeling are required in sections 610 and 611, respectively, and a program to review the safety of alternatives to controlled substances is required under section 612.

II. Section 609 of the Act

Section 609 of the Act establishes an important new statutory structure to control the release of refrigerant from motor vehicle air conditioners into the atmosphere. After January 1, 1992, any person repairing or servicing motor vehicle air conditioners for consideration must properly use refrigerant recycling equipment that has been approved by EPA. All such persons must be properly trained and certified. The January 1, 1992 effective date is delayed for one year for small volume shops—entities that serviced less than 100 motor vehicle air conditioners during 1990. This one year delay is only granted upon the filing of a small entity certification with EPA.

Section 609 requires EPA to establish standards for refrigerant recycling equipment, for proper use of such equipment, and for the certification of technicians. These standards must be at least as stringent as certain voluntary standards adopted by industry. Equipment purchased before today's proposal will be considered approved if it is substantially identical to equipment meeting EPA's standards.

Either EPA or independent testing organizations approved by EPA will certify that equipment meets the standards. EPA will also approve organizations to train and certify persons in the proper use of such equipment. By a certain date, persons performing service on motor vehicle air conditioners for consideration must certify to EPA that they have acquired and are properly using approved equipment, and that all service personnel using the equipment have been properly trained and certified.

Finally, beginning November 15, 1992, the sale or distribution in interstate commerce of any class I or class II substance suitable for use in a motor vehicle air-conditioning system in small containers (less than 20 pounds) is prohibited. The only exception is for sales or distribution to persons servicing motor vehicle air conditioners for consideration in compliance with all the above requirements.

III. Today's Proposed Rule

Today's proposed rule implements section 609 of the Clean Air Act Amendments. This section will review the proposed definitions and the major sections of the regulation along with the issues considered by the Agency.

A. Definitions

Presented here are the definitions of several terms within the basic statutory requirement and clarification of terms that were not specifically defined in the Act but must be specified for the purposes of this proposed regulation.

1. Refrigerant

This term is defined to mean any class I or class II substance used in a motor vehicle air conditioner. Effective November 15, 1995, five years after the enactment of the Act, the term refrigerant shall also include any substitute substance, such as HFC–134a. The Agency emphasizes that any blend of substances that includes a Class I or class II substance is included under this definition and the other requirements proposed today.

2. Motor Vehicle Air Conditioners

In Title II of the Act, "motor vehicle" is defined as "any self-propelled vehicle designed for transporting persons or property on a street or highway" (See section 216(2) of the Act). For the purposes of title VI only, EPA proposes to define "motor vehicle air conditioners" to include all mechanical vapor compression units that cool the driver or passenger compartments of self-propelled vehicles designed for transporting persons or property, including but not limited to farm vehicles, construction equipment, cars, and trucks. To date, these units all use CFC–12 as the refrigerant, however, future refrigerants such as HFC–134a are possible. EPA requests comment on the scope of this definition of motor vehicles and motor vehicle air conditioners, particularly with vehicles that do not meet the definition of motor vehicle under Title II.

EPA would like to clarify that the hermetically sealed refrigeration system which cools the storage container of a refrigerated transport truck is not included in this definition, but the unit which cools the driver or passenger compartment of the truck is included. The Administrator acknowledges that small aircraft and marine vessels fall outside the scope of the statutory term motor vehicle. The Administrator wishes to stress the importance of voluntary recycling during servicing of these units.

3. Service Involving Refrigerant

EPA believes that the intent of the Act is to require recycling of refrigerant in MACs whenever service is being performed that may release refrigerant to the atmosphere. It is estimated that nearly 11,000 kg/yr of CFC–12 is available for recovery and recycling during MAC servicing (See Costs and Benefits of MACs Recycling, May 24, 1991). This includes service of the motor vehicle air conditioners themselves and service of auto components that may require some dismantling of the MAC system.

This proposed regulation does not include salvage of refrigerant from junked automobiles. EPA would like to encourage recovery of this refrigerant. The specific requirements for recovery at disposal, if any, may be addressed in the regulations implementing the Safe Disposal Program of section 608 of the Act.

4. Service For Consideration

EPA interprets "servicing motor vehicles for consideration" to include all persons who are paid to perform service on MACs, thus subjecting to regulation all service except that done for free. The type of service covered by the regulations may be performed at establishments such as independent repair shops, service stations, car and truck fleet shops, body shops, chain or franchised repair shops, new car and truck dealers, rental establishments, radiator repair shops, mobile repair operations, vocational technical schools, farm equipment dealerships, and airports.

EPA recognizes that "do-it-yourself" repair of MACs is not effectively restricted by the Act. Congress intended to discourage this type of repair through the small container limitations discussed in section II.E. Recovery and recycling of refrigerant is important and the Act requires that these activities be performed by trained technicians using the appropriate equipment.

5. Properly Using

The Act requires that the Administrator establish standards for using equipment that shall be at least as stringent as the applicable standards of the Society of Automotive Engineers (SAE) in effect as of the date of enactment (November 15, 1990). The standard referred to, J1989, provides recommended service procedures for the containment of CFC–12. It is important to note that refrigerant introduced into the system for the purpose of leak detection must be recovered and not vented. The Agency is proposing that the standard for "properly using" include J1989 and an additional requirement that if recovery only equipment is used, the refrigerant must be sent off-site for reclamation or recycled on-site. The Agency is proposing that the requirement in the SAE J Standards that refrigerant received from an off site reclaim facility that is intended for recharge of automobiles must meet the Air-conditioning and Refrigeration Institute standard of purity (ARI Standard 700–88). The Agency believes that this additional requirement will ensure that recovered refrigerant is not vented to the atmosphere. This definition is intended to cover facilities that own an on-site recycle machine in addition to several recover only machines (such as large establishments with many service bays) and small facilities that wish to purchase one piece of recover only equipment. EPA is requesting comment on its proposal related to standards for reclaimed refrigerant. For a discussion of certified equipment, see section II.B.

B. Equipment Certification

1. Approved Refrigerant Recycling Equipment

Under section 609(b)(2)(A) of the Act, the Administrator establishes standards applicable to equipment for the extraction and reclamation of refrigerant from motor vehicle air conditioners. The Administrator (or an independent standards testing organization approved by the Administrator) must then certify equipment to meet these standards. The Act states that the standards developed must be at least as stringent as those developed by the Society of Automotive Engineers in effect as of November 15, 1990 (SAE Standard J1990).

As described in section I.F., the SAE J standards were developed based on industry consensus on the recommended practices for service procedures for containment of CFC–12 (J1989) and for extraction and recycle equipment for motor vehicle air-conditioning systems (J1990). Standard J1990 in effect as of November 15, 1990 states in its scope that the purpose of the document is "to provide equipment specifications for CFC–12 (R–12) recycling and/or recovery and recharging systems". The standard of purity (J1991) is not specifically referenced in the Act, although J1990 refers to it within the test of the standard.

EPA considered two options in designing standards for approved refrigerant recycling equipment (approved equipment) under section 609. The first option is to establish only one standard for equipment to recover and recycle refrigerant. This is the type of equipment that is currently being certified by Underwriters Laboratory using the sections of the J1990 standard that apply to recover and recycle equipment. Adoption of this single standard would preclude the use of recover only machines.

The second option requires the establishment of two separate standards, one for equipment that both recovers the refrigerant and recycles on-site (as described in option one) and another standard for equipment that only recovers refrigerant. The refrigerant from these recover only machines would then be sent off-site for reclamation to the ARI Standard 700–88, a standard developed by the Air-conditioning and Refrigeration Institute that defines a level of quality for new, reclaimed, and or repackaged refrigerants. This standard is referred to in J1991 and is more stringent than the J1991 purity standard for recycled refrigerant from MACs. Under option 2, establishments would be allowed to use either type of machine provided it is certified under the appropriate standard.

In reviewing these two options, EPA objectives were to provide flexibility for the regulated community without compromising environmental protection. The Agency also considered the protection of the MAC units from damage as essential to a successful recycling program. The benefits of each option are presented below followed by a discussion of EPA's evaluation criteria.

Equipment that recovers and recycles refrigerant ensures, if the equipment is used properly, that refrigerant is recycled to the J1991 purity standard. The likelihood of recharging motor vehicle air-conditioners with unclean refrigerant is minimized because the refrigerant removed from cars is recycled and returned to cars. This recover/recycle standard includes machines that separate oil and remove moisture through single or multiple passes through moisture absorption devices. The use of certified equipment that both recovers and recycles refrigerant may also reduce cross contamination once CFC replacements, such as HFC–134a, are introduced into the market. Refrigerant removed from an automobile would be recycled and returned to the same automobile.

Option 2 would require service establishments to purchase equipment that recycles the refrigerant on-site *or* equipment that recovers the refrigerant for off-site reclamation. The recover only machines would also need to be certified to ensure that they effectively recover refrigerant and are designed to minimize the risk of cross contamination. This would be done by EPA approved certification laboratories to a standard for recover only equipment established by the Administrator. In developing this standard, the Agency would encourage SAE, or another industry standards setting organization if appropriate, to provide the Agency with consensus based industry recommendations for the content of the standard, or to develop a standard for Agency review.

Under option 2, a service entity has flexibility in the design of its business operation to ensure compliance with the law. Small establishments or entities that do not perform a large number of motor vehicle air-conditioning jobs may choose to purchase the recover only equipment, send the refrigerant they recover to reclamation facilities, and purchase the CFCs they will need to perform service.

In evaluating these options, EPA first examined the environmental consequences of using the two types of equipment. In response to concerns raised by off-site reclamation facilities, EPA examined the possibility that significant amounts of CFC–12 could be released from on-site recycling devices when the noncondensable gases are purged from the refrigerant after recycling. Non-condensable gases must be removed from refrigerant in order to prevent an unacceptable increase in system operating pressure and subsequent compressor damage. The recycling on-site equipment purges the non-condensable gases removed from the refrigerant during recycling and there is the possibility that some refrigerant entrained in the gas will be released to the atmosphere during this non-condensable gas purge. Underwriters Laboratory estimates that the amount of CFC–12 released is well under 5 percent by weight of the recovered refrigerant in the machines they have certified to date. SAE is in the process of revising J1990 to limit the amount of CFC–12 released during purging to no more than 5 percent. This amount of refrigerant emitted is not significant when compared to emissions that occur at servicing when refrigerant is not contained at all. Recover only machines do not purge non-condensables from the refrigerant collected and, therefore, do not release CFC–12 in the process. With respect to purging, recover only provides more environmental protection.

Another environmental concern is the efficiency of removal of refrigerant from motor vehicles. The extraction of refrigerant is common to both types of equipment and is important in reducing emissions to the environment. The SAE standards do not directly specify minimum extraction efficiency although removal at a vacuum is required. EPA expects to propose that recover only equipment must have the same efficiency of removal as recover/recycle equipment and that this efficiency be made an explicit element of a recover only standard. EPA requests comment on the level of efficiency that should be required.

On-site recover and recycle machines must be able to separate the lubricant from recovered refrigerant. This is necessary to prolong the life of the extraction vacuum pump, to remove oil from refrigerant returned to the car, and to measure the amount of oil removed so that an equivalent amount of oil can be added at recharge. It is possible that a small amount of CFC–12 may remain in the lubricant after recycling and will require disposal. EPA believes this lubricant should be handled by the establishment in the same manner that the establishment handles used oil. The residual CFC in the lubricant is not a hazardous constituent under Federal regulations. Although some recover only machines currently sold do not perform oil separation as part of the recover operation, EPA is aware that a standard for recover only machines may include oil separation and as a result, both recover only and recycle on-site machines will generate used lubricant. EPA requests comment on the necessity of including oil separation in a standard for recover only machines.

EPA also examined the cost of equipment when evaluating options 1 and 2. Prices of equipment vary based on brand and model; on the quality of components and convenience features; and on the optional diagnostic features. In general, recover only equipment is less expensive than recycle on-site equipment. Overall operating costs for recycle machines, however, are lower than recover only machines because recover only operations must pay to have the refrigerant reclaimed or sell the refrigerant and purchase new refrigerant to recharge the MACs. Although the ability to recoup the initial cost of equipment will vary based on the number of MAC jobs performed by an establishment and the price of virgin refrigerant, a small establishment may find it more cost effective to comply with the regulations by purchasing recover only equipment. The Agency believes that allowing flexibility to purchase either type of machine will enhance overall compliance with the regulation and not pose undue economic burden on the industry.

EPA examined the implications of options 1 and 2 on motor vehicle air conditioning equipment. The Agency believes it is important to protect the integrity of this equipment to ensure a successful recycling program. The SAE standards state that refrigerant removed from an automobile, recycled to the J–1991 standard and returned to an automobile is at an acceptable level of purity. Any refrigerant sent off-site must actually be reclaimed to a higher level of purity, the ARI–700 standard, in order to assure it does not contain any contaminants that could be introduced from equipment other than mobile air conditioners (e.g. refrigerant from a home refrigerator may contain acids and thus may not be introduced into an automobile until it has been reclaimed to the ARI–700 standard). Therefore, as long as recovered refrigerant is recycled to the ARI–700 standard off-site, and an equivalent amount of lubricant oil is replaced, use of the recover only equipment should not present an increased possibility of damage to equipment.

Automotive industry representatives have expressed concern that recover only machines may result in used refrigerant being vented or reintroduced into MACs without being sent off-site for reclamation. The industry is concerned that sending out refrigerant or waiting for it to be picked up by a reclamation service represents a significant burden and inconvenience to technicians. They also stated that the cylinders of used refrigerant may be confused with cylinders of new refrigerant. EPA believes the standard for properly using equipment, because it includes the requirement that recovered refrigerant be recycled on-site or sent off-site for reclamation, will minimize the reintroduction of used refrigerant. EPA also believes that industry practices including properly marked recover only containers and proper valves and fittings restricted to recover only containers could minimize the likelihood of contamination or improper use. The requirement to clean refrigerant before recharge will be reinforced by the recordkeeping provisions discussed in section II.H. which require invoices to be used as proof that the refrigerant was either recycled or reclaimed.

Finally, EPA examined the need to consider future requirements for recycling of substitute refrigerants in MACs. Several automobile manufacturers have announced that HFC–134a is the designated replacement for MACs in new cars beginning as early as 1992 for some models. This substitute must also be recycled under the Act, effective November 15, 1995. Research is also currently being performed to determine the appropriate refrigerant that could be used in retrofitting existing CFC–12 MACs. Some potential options include HFC–134a and HCFC blends. Under the Act, if the HCFC blends are used as a refrigerant in MACs, they must also be recycled as of January 1, 1992. Off-site recycling may be more attractive in the future if multiple

refrigerants become widely used in motor vehicle air conditioners.

Based on the criteria discussed above, EPA believes that Option 2 fulfills the intent of the Act while allowing flexibility for the regulated community. EPA is sensitive to the need to allow flexible compliance mechanisms in situations where the regulated community is very large; recover only machines may reduce overall emissions of CFCs because they promote increased compliance rates among small facilities. Although recycle machines may allow a small amount of refrigerant to be emitted to the environment as part of the purge of non-condensable gases, this amount is insignificant relative to the reduction in emissions that can be achieved through on-site recycle capability.

EPA believes that option 2, allowing the use of recover only equipment in addition to recover/recycle equipment, is authorized under section 609 of the Act. Section 609 defines "approved refrigerant recycling equipment" as "equipment certified by the Administrator * * * to meet the standards established by the Administrator and applicable to equipment for the extraction and reclamation of (motor vehicle air conditioner) refrigerant * * *". These standards are to be as stringent as one set by the Society of Automotive Engineers, SAE J1990.

The terms "extraction", "reclamation" and "recycle" are terms of art in the industry, and refer to the removal of refrigerant (extraction), processing of the refrigerant off-site to a near virgin condition of purity (reclamation), or processing of the refrigerant on-site to a condition acceptable for reuse as a refrigerant in the same vehicle, without the need to send it off-site for reclamation.[1] As previously discussed, EPA's ANPRM defined these terms.

Seen against this background, the statutory definition does not provide a clear description of the types of equipment covered in its scope. First, the definition of "refrigerant recycling equipment" refers to equipment that "extracts and reclaims". The normal usage of recycle equipment in this context is equipment that cleans the refrigerant on-site, but does not reclaim it—the latter term is reserved for refrigerant that is sent off-site for distillation to a higher standard of purity. At the same time, section 609(b)(2) references SAE J1990, which states that its purpose is to "provide equipment specifications for * * * recycling and/or recovery, and recharging systems."

The legislative history fails to resolve this ambiguity in the statute. However, it does appear clear from the structure of section 609 that Congress focused on activities conducted at the service establishment, whether recovery or recovery/recycle, and was not legislating specification for off-site equipment used to reprocess refrigerant to near virgin purity.

EPA therefore attempted to define "approved refrigerant recycling equipment" with the view of maximizing environmental protection, while providing the affected industry the flexibility to meet the changing nature of refrigerants. For all the reasons discussed above, EPA believes the proposed definition best implements Congressional intent in this situation.

Many establishments have already purchased certified recycle on-site equipment, and the Agency would like to encourage this activity to continue in advance of publication of the final rule.

EPA requests comment on this proposal to establish two separate standards. Specifically, the Agency requests comments on the process for developing the recover only standard and the role of industry organizations such as SAE and the International Mobile Air Conditioning Association (IMACA), MVMA, MACS and any other representatives affected by this option.

2. Substantially Identical Equipment

The Act states that equipment purchased before the proposal of regulations under this section shall be considered certified if it is "substantially identical" to approved equipment. EPA estimates that most of the equipment sold to date are recover/recycle models that have been certified by U.L. to meet the SAE J Standards. These U.L. certified models will be included as certified equipment under the requirements of this regulation.

Several manufacturers sold models of recover/recycle equipment before they had received U.L. certification. In situations where the model sold was the same model that has since received the U.L. certification, this equipment will be considered substantially identical. In situations where the models sold are not the same as the model that received the certification (U.L. states that in many cases manufacturers had to make some changes in their equipment in order to pass the certification tests), EPA will consult with U.L. and any other approved independent standards testing organizations to evaluate the equipment. EPA will use U.L. test data and any additional information submitted by the manufacturer (process diagrams and lists of components) in the evaluation. EPA will maintain a list of equipment determined to be substantially identical. An essential criteria for evaluation is that equipment cleans refrigerant to the SAE J1991 purity standard. The Agency is also interested in ensuring safety in operation of the equipment. U.L. has advised EPA that it believes many of the early, pre-U.L. certification models sold are not substantially identical to models that achieved certification. The total number of these machines sold is small compared to the number of certified machines. Initial contact has been made with several manufacturers and in some cases the possibility of retrofit kits to bring the pre-certification models up to the performance standard of certified models has been discussed. EPA would require that the retrofit kits also be approved by an approved independent standards testing organizations and owners of equipment must indicate in their certification to the Agency (section II.F.) that they have retrofitted equipment.

EPA is aware of some cases in which equipment purchased before the proposal of regulations was produced by manufacturers that have not yet received a certification on any model or by manufacturers that no longer make equipment. Once a manufacturer does certify his machine, EPA will consider earlier models in the manner described above. In situations where equipment was purchased without certification and no model by that manufacturer achieved certification, EPA will evaluate the equipment on a model-by-model basis. Owners of the equipment, if they can not contact manufacturers to determine the status of equipment, must submit process flowsheets and lists of components and EPA reserves the right to inspect the equipment and request samples of refrigerant if necessary. The address for submittal of information is: MACs Recycling Program Manager, Stratospheric Ozone Protection Branch (ANR–445), U.S. Environmental Protection Agency, 401 M Street, Washington, DC 20460. Attention: Substantially Identical Equipment Review.

EPA will maintain a very strict interpretation of the substantially identical clause in order to protect the air-conditioning units and the integrity of the recycling program. As a result, EPA does not anticipate that many machines will qualify as substantially identical through this evaluation procedure. EPA requests comment on its

[1] Industry has adopted separate voluntary standards for the purity of refrigerant, depending whether it is sent off-site for reclamation (ARI 700–88) or is recycled on-site (SAE J1991).

approach to the substantially identical clause and the feasibility of the approach for reviewing equipment.

C. Approved Independent Standards Testing Organizations

The Act requires that equipment be certified by the Administrator or an independent standards testing organization approved by the Administrator. The standards that the equipment must meet are discussed in section II.B. This section will describe EPA's proposed procedure for approval of testing organizations.

As mentioned in the ANPRM, U.L. began an equipment testing program to respond to industry concern that recover/recycle machines perform to the specifications of the SAE J Standards. With industry and EPA input, U.L. designed an equipment certification program (U.L. 1963) for recover/recycle equipment and began testing in October, 1989.

EPA commends U.L. for its activities and encourages other independent laboratories or testing organizations to offer equipment certification programs. The Electrical Testing Laboratory (ETL) has indicated that it may develop a testing program. Any organizations interested in becoming approved must apply to the Agency and demonstrate that they are capable of performing the testing. The Agency reserves the right to inspect the facility.

EPA will require that testing organizations demonstrate their ability to test recover/recycle equipment for removal of moisture and non-condensable gas and for separation of oil to determine if equipment meets the SAE J Standards. The maximum level of refrigerant moisture content by weight is 15 parts per million (ppm) at 70° F under guidelines established by SAE J1991 and the standard equipment used for calculating this is the Karl Fischer Coulometer. The J1991 standard states that 4000 ppm is the maximum level of oil allowed in a recycled sample of refrigerant and this is measured with a preweighted graduated Goetz phosphorous tube. The procedure requires a minimum temperature of 90° F above the boiling point of the refrigerant be maintained until 85% of the sample is boiled off from the Goetz tube. The tube is then placed in a refrigerated brine bath at 50° F above the boiling point of the refrigerant for 30 minutes. The tube is reweighed at room temperature and the percentage oil is then determined.

The amount of non-condensable gas released must be measured as part of any equipment certification program. For non-condensable gas, the SAE J–1991 specifies that 330 ppm by weight is the maximum allowable amount. Gas chromatography is used to analyze for the level of non-condensable gas.

The Agency expects to propose the establishment of a standard for recover only equipment in section II.B. Approved testing laboratories will be expected to develop equipment testing procedures for the certification of this type of equipment also.

EPA requests comment on this proposed method of approving independent standards testing organizations. Also, any organization interested in developing a program is encouraged to contact the Agency.

D. Technician Training and Certification

The Act directs the Administrator to establish standards for training and certification in the proper use of approved refrigerant recycling equipment during the performance of service on motor vehicle air conditioners. These standards must be at least as stringent as SAE J1989 under the certification program of the National Institute for Automotive Service Excellence (ASE) or the Mobile Air Conditioning Society (MACS). The MACS "Refrigerant Recycling & Service Procedures Certification Program" was developed to specifically address technician certification in refrigerant recycling. ASE offers voluntary certification of technicians in several aspects of automotive service. Although ASE administers a test on automotive heating and air conditioning, at the time the Act was passed, the test did not contain specific questions on recycling of refrigerant.

The two technician certification programs mentioned in the Act have a few similarities and some key differences. For example, MACS provides a booklet for self-training, whereas ASE stresses hands-on, on-the-job training. MACS's test is an open-book, non-proctored exam for a fee of $20 for one technician and $15 per additional technician at the same establishment. The technician mails the completed test to an independent organization for grading. The ASE test is a closed-book, proctored exam, administered twice a year for a fee of $35 per technician. Finally, MACS certification is permanent, whereas recertification every five years for a fee of $20 is necessary with ASE.

In designing the standards, the Agency reviewed the programs mentioned in the Act and met with representatives from industry, environmental groups, and equipment manufacturers to assure that all necessary aspects of use of the approved equipment are covered while preserving the flexibility of a variety of testing mechanisms.

1. Training

Each program must provide adequate training, one or more of the following components: on-the-job training, training through self-study of instructional material, or on-site training involving instructors, videos or a hands-on demonstration. EPA believes this wide range of training opportunities offers sufficient means for technicians to learn how to use recycling equipment and to understand the importance of refrigerant containment.

2. Test Subject Material

The certification tests must adequately address the relevant SAE J standards established for the service and repair of mobile air conditioners (J1989, J1990, and J1991). These standards cover the recommended service procedures for the containment of R–12, extraction and recycle equipment, and the standard of purity for refrigerant in MACs. The tests should also anticipate future technological developments, such as the introduction of HFC–134a in new MACs and the potential need to use blends as a substitute if CFC–12 is in short supply, that will become necessary based on the phase-out of ozone depleting substances. It will be imperative that technicians be able to identify the different systems and keep the chemicals separate during servicing and recycling.

EPA believes it is necessary for service technicians to understand why recovering refrigerant is important from an environmental perspective. The experience in the Australian motor vehicle air-conditioning program reveals anecdotal evidence that increased compliance was achieved when technicianss understood that their activities regarding refrigerant had an impact on their environment and the environment of their children. Therefore, EPA proposes that certification programs contain material covering the environmental consequences of refrigerant release and the adverse effects of stratospheric ozone layer depletion.

The general regulatory requirements imposed by EPA under section 609 of the Act must also be included in the program to assure that technicians are familiar with the legal requirements regarding service.

3. Test Administration

The standards for certification programs do not contain a minimum number of questions for each test. EPA evaluated the option of a minimum number of questions and also considered the need to establish an approved list of questions for use in all certification programs. A list of questions assures consistency across all certification programs, however, EPA anticipates difficulty maintaining test integrity if the same set of questions are used repeatedly. As for a minimum number of questions, when EPA reviews certification programs, one criteria for approval is that the tests cover the subject material in sufficient depth and detail. The number of questions on each test may vary by the testing scheme employed, for example a proctored, closed-book test may be fewer questions than an open-book test, but both tests assess the technicians knowledge accurately. EPA will consider the number of questions on the test and the number of questions that must be answered correctly in order to pass the test when evaluating programs as a whole. EPA's goals in evaluation will be to assess if each program meets the standards and to achieve parity among testing situations.

EPA proposes standards for test administration to insure integrity of the tests. Completed tests must be sent to an independent testing authority for grading. Sufficient measures must be taken at the test site to ensure that tests are completed honestly by each technician. For example, multiple versions of a test for a single test site might be appropriate. Each test must provide a means of verifying the identification of the individual taking the test. Examples of verification mechanisms include signatures and social security numbers. Programs should make provisions for non-English speaking technicians by providing tests in other languages or allowing the use of a translator when taking the test. If a translator is used, the certificate received must indicate that translator assistance was required. EPA is requesting comment on proposed test administration procedures.

EPA is proposing to allow open-book tests taken without the supervision of a proctor to be used in motor vehicle air-conditioning certification programs, where appropriate. An example of this type of program is the Mobile Air-Conditioning Society certification program and is referred to in the Act. When considering this option, EPA evaluated the validity of this type of testing considering the material the tests must cover, the number of technicians that must be certified, and the need to provide flexibility for the regulated community. Programs that propose this method must meet the standards to insure test validity and must necessarily include difficult questions on the tests and require a high number of correct answers for passing in order to maintain parity with proctored, closed-book tests such as the program of ASE mentioned in the Act. The Agency believes that open-book testing, if structured properly, will result in technicians having the necessary knowledge to successfully perform refrigerant recovery and recycling during service.

It is important to note that EPA approved certification programs are not intended to assure expertise in motor vehicle air-conditioning repair. The program covers recycling of refrigerant during motor vehicle air-conditioning repair, a subset of the knowledge needed to perform effective service. Open-book testing can be a valid method of testing this subset of knowledge, however, EPA also supports the development of programs, such as ASE, that test technicians' mastery of the service procedures and include refrigerant recycling within a larger pre-existing framework. Both types of testing are valid, as are programs that may be developed by other trade associations, vocational schools, or other groups, if they meet the standards proposed today. EPA requests comment on EPA's proposed certifying procedures and the validity of open-book, unproctored testing for motor vehicle air-conditioning technicians.

4. Technical Revisions

Directors of certification programs must conduct periodic reviews of test subject material and update the material based upon the latest technological developments in MAC service and repair. EPA proposes this standard to assure that tests reflect the expected developments in MACs as CFCs are phased out of production. EPA proposes to require a written summary of the review and any changes be submitted to the Agency every two years.

5. Recertification

At present, EPA does not intend to require periodic recertification of technicians because the test subject material should cover likely future technological developments. However, based on the technical revisions described above and developments in the MAC service and repair sector, the Agency may consider the need to specify the need for technician recertification at some future date if necessary. The Agency requests comment on the need to recertify.

6. Proof of Certification

Finally, each certification program must offer individual proof of certification, such as a certificate, wallet-sized card, or display card, upon successful completion of the test. The proof of certification is essential for the purchase of small containers of Class I or Class II substances, as described in section II.E. below. The proof of certification will also assist in monitoring compliance. EPA proposes that each certification program provide a unique number for each certified technician to assist in recordkeeping and enforcement procedures.

EPA proposes to evaluate programs as a whole to assure each one meets the standards and to achieve parity among all approved programs. EPA reserves the right to consider other factors it deems relevant to ensure the effectiveness of certification programs. The Agency is aware that some certification programs are already actively certifying technicians in anticipation of receiving EPA approval. The Agency would like to encourage continuance of these activities and will make every effort to "grandfather in" technicians certified under these programs. The Agency may not issue formal approval of programs until the rulemaking process is complete. Some programs may need to make changes based on the public comments received on the standards proposed today. In the event such changes are made, the Agency would encourage programs to develop methods to bring technicians certified before promulgation of regulations into compliance.

The Agency invites public comment on the approach and the specific standards proposed here today.

E. Small Container Restrictions

The Act states that effective November 15, 1992, it is unlawful for any person to sell or distribute, or offer for sale or distribution, any class I or class II substance suitable for use as a refrigerant in motor vehicle air-conditioning systems in a container of less than 20 pounds except to certified technicians servicing motor vehicle air-conditioners for consideration.

One option for the implementation of this provision is a strict interpretation of the Act to allow retail sales of small containers of refrigerant to be sold only to certified technicians. This would require that technician certification be checked by the seller upon purchase of small containers, and would require that

distributors or wholesalers become certified technicians if they wish to continue to purchase small containers.

A second option distinguishes between purchasing refrigerant in small containers for use and purchasing refrigerant in small containers for the purpose of resale only.

There are several approaches for compliance and enforcement for retail sales. One approach for compliance enforcement is to require retailers to check technician certification upon sale, and for EPA to conduct periodic spot checks. Another approach, which EPA recommends, is to require retailers to check technician certification and keep a record of name, certification number and place of employment. This approach would also require EPA to conduct periodic spot checks. A third approach could be on-site verification of technician certification at the time of purchase, a system similar to the verification of credit card numbers upon use.

For wholesale or sale for purposes of distribution, technician certification would not be required. One option is to require sellers to inform producers that the small containers can be used for resale only. EPA recommends a second option that, the sellers must obtain a signed statement from the purchaser stating that the small containers are intended for resale only. This requirement is intended to ensure that purchasers performing service for consideration in conformance with the requirements of the Act and that purchasers buying only for distribution understand that the containers must only be used by certified technicians. EPA requests comment on these two compliance options for sales to distributors.

In addition, EPA proposes requiring outlets selling small containers to display a sign stating that it is unlawful for an individual to purchase small containers if they are not a certified technician performing service for consideration.

EPA proposes that option 2 fulfills Congressional intent to maintain the availability of small container for certified technicians while prohibiting their use by "do-it-yourselfers". The provision complements other requirements of the section that serve to eliminate do-it-yourself MAC service because of the likelihood that this type of service results in venting of refrigerant. Under the proposed regulations, all individuals who purchase small containers for service will need to become certified and distributors will have to sign statements that alert them to the requirement that small containers may only be used by certified technicians. The requirement to record technician certification number will assist EPA in tracking the use of small containers. The Agency requests comment on the proposed recordkeeping requirements and alternative methods of compliance enforcement.

The Agency may revisit this issue in future regulations developed under section 608 of the Act to set the lowest achievable emission levels. The Agency will examine the residual amount of CFC–12 that remains in the small container after use to determine if this represents an unacceptable emission to the environment. The Agency requests comment on the need to investigate this issue and on the approach proposed today to implement the small can restrictions of the Act.

F. Equipment Certification and Small Entity Certification

1. Certification Dates

The Act requires that effective two years from enactment (November 15, 1992) persons performing service must certify to the Administrator that they have acquired and are properly using approved equipment, unless they are performing service at an entity that has serviced fewer than 100 motor vehicles in 1990. These small entities must submit a statement declaring that they performed under 100 motor vehicle air-conditioning service jobs in 1990 to the Administrator by January 1, 1992. Persons at these small entities must purchase equipment and certify to the Administrator by January 1, 1993. In order to simplify the equipment certification process, EPA proposes to set the equipment certification date for all persons performing service as January 1, 1993. EPA would like to clarify that persons performing service must obtain and properly use approved refrigerant recycling equipment by January 1, 1992, unless they are small entities. These small entities have an additional year to obtain equipment and all entities must certify that they have equipment on or before January 1, 1993.

EPA would like to encourage service entities to certify that they own equipment before January 1, 1993. The data elements required for certification are described below. The Agency envisions a process whereby owners fill out a form, which the Act mentions may be provided by the manufacturers of equipment, and mail it to EPA when they are mailing in the warranty card for the equipment to the manufacturer. Many of the manufacturers of approved equipment have already volunteered to provide a form with equipment, and EPA encourages all approved equipment manufacturers to include a form to facilitate certification.

2. Example Form

The Act requires that persons certify to the Administrator that they have acquired and are properly using approved equipment. The certification must include the serial number of each unit of equipment acquired, the name and address of the owner of the equipment, the manufacturer, model number, date of manufacturer, and a signed statement that each individual authorized to perform service using the equipment is properly trained and certified. The Act mentions that the certifications may be made using a standard form provided by the manufacturers of equipment. An example of the type of form that manufacturers may want to develop is provided as Example A in this proposed rule. If a manufacturer does not provide a form, the owner of equipment must still provide certification to the Administrator containing all the elements mentioned above.

The Act states that service establishments performing under 100 MAC related jobs during calendar year 1990 have an additional year to purchase equipment. Establishments may only qualify for this one year delay if they certify to the Administrator that they have performed service on fewer than 100 MACs in 1990. An example of the form this certification may take is provided in the form in Example A. It is not required that a small entity use this form; the form is intended as guidance.

All certifications, both equipment and small entity, should be sent to the following address: MACs Recycling Program Manager, Stratospheric Ozone Protection Branch (ANR–445), U.S. Environmental Protection Agency, 401 M St. SW, Washington, DC 20460.

The Agency requests comment on the certification method and the example format provided.

G. Relationship to State Regulations

The Act does not contain authority for Federal preemption of state regulations. The regulations proposed today represent the Federal motor vehicle air conditioning recycling program and states may establish programs more stringent in their requirements if they wish. In states without programs or with programs with less stringent requirements, the Federal program takes precedence.

EPA is aware that some states already have effective programs e.g. Florida and Oregon. Like the Federal program

proposed today, Florida requires that service establishments register their equipment with the state. While state programs are not preempted, compliance with state programs does not in and of itself constitute compliance with the Federal program. EPA invites comment on any issues related to the relationship between Federal and state programs.

H. Recordkeeping Requirements

EPA has presented a number of options and proposed the following:

1. Certification Programs

As discussed in section III.D.6, certification programs must maintain records of the unique number assigned to each technician certified through their program.

2. Small Container Sales Outlets

As discussed in section III.E, sellers of small containers of refrigerant must record technician certification numbers of all purchasers who intend to use the cans for service. For wholesale or purposes of distribution, the sellers must record a signed statement from the purchaser stating that the small containers are intended for resale only.

3. Technicians

As stated in section 609 of the Act, each person performing service on motor vehicle air conditioners for consideration must be properly trained and certified. A copy of the certification of each employee must be maintained at the service establishment for inspection. This will enable an inspector to efficiently check the certification of technicians employed at an establishment.

4. Owners of Approved Equipment

Service establishments must certify to the Administrator that they have acquired and are properly using approved equipment. This certification must include the name of the owner of the equipment, the name, and address of the establishment where the equipment is located, the equipment manufacturer, the model number, the serial number, and the date of manufacture. The certification must be signed by the owner of tne equipment or another responsible officer. A new certification must be filed if the owner of the approved equipment changes.

5. Motor Vehicle Air-Conditioning Servicing

In designing the recordkeeping requirements for motor vehicle air conditioning service, EPA has considered several options. One option to monitor compliance is to have EPA inspectors conduct spot checks of service establishments to determine if requirements are being satisfied. Under this approach, these service establishments would not be required to keep records of motor vehicle air-conditioning servicing. EPA is proposing an option which is built on the current invoicing procedures at service establishments with follow-up instructions. EPA proposes that invoices indicate that service involving refrigerant was performed, the date, the name, address, and telephone number of the vehicle owner, and the make, model, odometer reading and license plate number of the vehicle serviced. In most cases, invoices already contain this information and thus recordkeeping should not be burdensome. These records are necessary for compliance verifications and, if violations are found, to provide evidence for successful prosecution.

If the service establishment acquires recover only equipment, the refrigerant must be reclaimed off-site if no other on-site recycling capacity exists. To ensure that the refrigerant is reclaimed at an off-site reclamation facility and not vented to the atmosphere, the service establishment must maintain records of the amount of refrigerant reclaimed off-site, the name and address of the reclamation facility, and the date of the transaction.

Under the EPA proposal service establishments must also maintain a record of the amount of refrigerant purchased and consumed each month. This requirement will enable EPA to monitor the amount of refrigerant reclaimed off-site and compare it to the quantity purchased and the number of vehicles serviced.

All facilities servicing motor vehicle air conditioning must allow an authorized representative entry on to the premises to inspect for compliance with these regulations.

EPA requests comment on these recordkeeping requirements and possible alternatives.

IV. Summary of Supporting Analyses

A. Regulatory Impact Analysis

Executive Order No. 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency has determined that this proposed regulation does not meet the definition of a major rule under E.O. 12291. However, the Agency has prepared an analysis to assess the impact of the regulation (see Costs and Benefits of MACs Recycling, May 24, 1991) which is available for review in the public docket for this rulemaking.

The Clean Air Act requires the EPA to promulgate regulations to phase out the production of ozone depleting substances by the year 2000 (2002 for methyl chloroform). EPA prepared a Regulatory Impact Analysis (RIA) under the requirements of E.O. 12291 to analyze the costs and benefits of the phaseout (see Regulatory Impact Analysis: Compliance with the Clean Air Act Provisions for the Protection of Stratospheric Ozone, December 21, 1990). A key result of this analysis is that with the imposition of the phase out of production coupled with an excise tax of CFCs (see Omnibus Trade Reconciliation Act, 1989), CFC–12 recycling would be fully implemented by service establishments by the year 1992 even without a specific regulatory requirement to do so. As a result, the overwhelming majority of costs of this regulation on CFR–12 recycling at service of motor vehicle air conditioners (e.g. capital cost of recycling equipment and annual operating costs) have already been attributed to the CFR phaseout and have been included in the Phaseout RIA. The Phaseout RIA does not, however, include the costs of MACs service technician certification as required under the Act. The total cost of this requirement is determined to be approximately $14.9 million, well under the $100 million cost threshold for a major rule. The Costs and Benefits of MAC Recycling provides some general costs and benefits that could be attributed to MAC recycling, however, these costs are not incremental to the costs of the phaseout.

B. Regulatory Flexibility Analysis

1. Purpose

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic

impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency has performed an initial regulatory flexibility analysis and determined that while this regulation affects a substantial number of small businesses, it does not impact a substantial number significantly. The analysis is found in appendix A in the Costs and Benefits of MAC Recycling and is available for review in the docket. The methodology and results of the analysis are presented below.

2. Methodology and Results

To examine the impacts on small businesses, EPA first characterized the regulated community by identifying the SIC codes that would be involved in the servicing and repair of motor vehicle air conditioners. After determining the number of these entities that are classified as small by the Small Business Act (SBA), the Agency performed impact tests using sales, profits and cash flow measures. The analysis included least expensive and most expensive private cost scenarios for compliance that were developed for The Costs and Benefits of MAC Recycling. The least expensive cost scenario assumed recover only equipment is purchased at a price of $1000 while the more expensive option assumes $3000 recycle equipment is acquired. The analysis also takes the cost of filter changes, sending refrigerant out for reclamation, labor, and cost savings from using recycled refrigerant into account.

The analysis indicates that the number of small establishments impacted by the regulation ranges from 18 percent if the least expensive compliance option, purchasing equipment that recovers refrigerant for off-site reclamation, is chosen to 32 percent if the most expensive compliance option is chosen. The Agency believes that most small establishments will choose the least cost option. This analysis did not reflect the fact that over 50,000 machines have already been sold based on the voluntary program developed by industry. The establishments that have purchased these machines will only have the incremental regulatory burden of technician certification. In addition, Congress has already established some flexibility for small establishments, defined as those entities that performed under 100 motor vehicle service jobs in 1990, by providing a one year extension on the requirement to purchase equipment.

The Agency believes that the one year extension, the fact that some entities have already purchased equipment, and the existence of the least cost option of purchasing recover only equipment will result in less than 18 percent of small establishments being significantly impacted by this regulation. The Agency frequently defines a "significant number" of small entities as approximately 20 percent or more of small establishments. As a result, the Agency certifies that this regulation will not have an impact on a significant number of small entities, pursuant to 5 U.S.C. 605(b).

C. Paperwork Reduction Act

The information collection requirements in the proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Informational Collection Request document has been prepared by EPA (ICR No. 1432.07) and a copy may be obtained by writing to the Information Policy Branch (PM–223), U.S. EPA, 401 M Street SW, Washington, DC 20460 or by calling (202) 382–2709.

Send comments on the information collection requirements to Chief, Information Policy Branch, PM–223, U.S. EPA, 401 M Street, SW., Washington, DC 20460 and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060–0170), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects for 40 CFR Part 82

Chlorofluorocarbons, Clean Air Act Amendments of 1990, Motor vehicle air conditioning, Recordkeeping, reporting and certification requirements, Stratospheric ozone layer.

Dated: August 21, 1991.

F. Henry Habicht,

Acting Administrator.

For the reasons set out in the Preamble, EPA proposes to amend 40 CFR part 82 as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. Authority: The authority citation for part 82 is revised to read as follows:

Authority: 42 U.S.C. 7414, 7601.

2. Part 82 is amended by adding subpart B to read as follows:

Note: The existing sections in part 82 will be designated as subpart A in a document to be published at a later time.

Subpart B—Servicing of Motor Vehicle Air Conditioners

Sec.
82.30 Purpose and scope.
82.32 Definitions.
82.34 Prohibitions.
82.36 Approved refrigerant recycling equipment.
82.38 Approved independent standards testing organizations.
82.40 Technician training and certification.
82.42 Certification and recordkeeping requirements.

Appendix A to Subpart B—Standard for Recycle/Recover Equipment

Appendix B to Subpart B—Standard for Recover Equipment [Reserved]

Subpart B—Servicing of Motor Vehicle Air Conditioners

§ 82.30 Purpose and scope.

(a) The purpose of these regulations is to implement section 609 of the Clean Air Act Amendments of 1990 on the servicing of motor vehicle air conditioners.

(b) This rule applies to any person performing service on motor vehicles for consideration when this service involves the refrigerant in the motor vehicle air conditioner.

§ 82.32 Definitions.

(a) *Approved Independent Standards Testing Organization* means any organization which has applied for and received approval from the Administrator pursuant to § 82.38.

(b) *Approved Refrigerant Recycling Equipment* means equipment certified to meet either one of the standards in § 82.36. Such equipment extracts and recycles refrigerant or extracts refrigerant for recycling on-site or reclamation off-site.

(c) *Motor vehicle* means any vehicle which is self-propelled and designed for transporting persons or property, including but not limited to passenger cars, light duty vehicles, heavy duty vehicles, farm vehicles, and construction equipment.

(d) *Motor vehicle air conditioners* means mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. This definition is not intended to encompass the hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo.

(e) *Properly using* means using equipment in conformity with the SAE J Standard 1989 entitled Recommended Service Procedure for the Containment of R–12 (CFC–12) in effect as of November 15, 1990. In addition, this includes operating the equipment in accordance with the manufacturer's

guide to operation and maintenance and using the equipment only for the controlled substance for which the machine is designed. For recover/recycle equipment, properly using means in part to recycle refrigerant before it is returned to a motor vehicle air conditioner. For equipment that only recovers refrigerant, properly using includes a requirement to recycle the refrigerant on-site or send the refrigerant off-site for reclamation. Refrigerant from reclaim facilities that is used for the purpose of recharging motor vehicle air conditioners must be at or above the standard of purity developed by the Air-conditioning and Refrigeration Institute (ARI 700–88) in effect as of November 15, 1990. In any event, approved equipment must be used to extract refrigerant prior to performing any service during which discharge of refrigerant from the motor vehicle air conditioner can reasonably be expected. Intentionally venting or disposing of refrigerant to the atmosphere is an improper use of equipment.

(f) *Refrigerant* means any class I or class II substance used in a motor vehicle air conditioner. Class I and class II substances are listed in part 82, subpart A, appendix A.

(g) *Service for consideration* means being paid to perform service, whether it is in cash, credit, goods, or services. This includes all service except that done for free.

(h) *Service involving refrigerant* means any service during which discharge or release of refrigerant from the motor vehicle air conditioner to the atmosphere can reasonably be expected to occur.

§ 82.34 Prohibitions.

(a) Effective January 1, 1992, no person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner

(1) Without properly using equipment approved pursuant to § 82.36 and

(2) Unless such person has been properly trained and certified under § 82.40.

The requirements of this paragraph do not apply until January 1, 1993 for small entities who certify to the Administrator under § 82.42(a)(2).

(b) Effective November 15, 1992, no person may sell or distribute, or offer for sale or distribution, any class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air-conditioner and that is in a container which contains less than 20 pounds of such refrigerant to any person unless that person is properly trained and certified under § 82.40 or certifies to the seller under § 82.42(b)(5) that the cans are intended for resale only.

(c) No technician training programs may issue certificates unless the program complies with all of the standards in § 82.40(a).

§ 82.36 Approved refrigerant recycling equipment.

(a) Equipment must be certified by an independent standards testing organization approved by the Administrator under § 82.38 to meet either one of the following standards:

(1) Equipment that recovers and recycles refrigerant must meet the standards published as appendix A to this subpart (Recommended Service Procedure for the Containment of R–12, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems, and Standard of Purity for Use in Mobile Air Conditioning Systems).

(2) Equipment that recovers refrigerant only must meet the standards published in appendix B to this subpart (Reserved).

(b) Equipment purchased before the proposal of regulations will be considered approved if the Administrator determines that the equipment is substantially identical to equipment certified under paragraph (a) of this section. Equipment manufacturers or owners may submit an application and supporting documents which indicate that the equipment is substantially identical to approved equipment to:

MACs Recycling Program Manager, Stratospheric Ozone Protection Branch, (ANR–445), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attn. Substantially Identical Equipment Review.

Supporting documents must include process flow sheets, lists of components and any other information which would indicate that the equipment is capable of cleaning the refrigerant to the standards in appendix A to this subpart. Authorized representatives of the Administrator may inspect equipment and request samples of refrigerant. Equipment which fails to meet appropriate standards will not be considered approved.

(c) The Administrator will maintain a list of approved equipment by manufacturer and model. Persons interested in obtaining a copy of the list should send written inquiries to the address in paragraph (b) of this section.

§ 82.38 Approved independent standards testing organizations.

(a) Any independent standards testing organization may apply for approval by the Administrator to certify equipment pursuant to the standards in appendix A and B [Reserved] to this subpart. The application shall be sent to:

MACs Recycling Program Manager, Stratospheric Ozone Protection Branch, (ANR–445), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(b) Applications for approval must include written information verifying the following:

(1) The list of equipment present at the organization that will be used for equipment testing.

(2) Expertise in equipment testing and the technical experience of the organization's personnel.

(3) Thorough knowledge of the standards as they appear in appendix A and appendix B [reserved] of this subpart.

(4) The organization must have no conflict of interest and receive no financial benefit from the outcome of certification testing.

(5) The organization must agree to allow the Administrator access to verify application material.

(c) If approval is denied under this section, the Administrator shall give written notice to the organization setting forth the basis for his determination.

(d) If at any time an approved independent standards testing organization violates any of the above requirements, the Administrator reserves the right to revoke approval.

§ 82.40 Technician training and certification.

(a) Any technician training and certification program may be approved, in accordance with the provisions of this paragraph, by submitting to the Administrator at the address in § 82.38 (a) verification that the program meets all of the following standards:

(1) *Training.* Each program must provide adequate training, including one or more of the following components: On-the-job training, training through self-study of instructional material, or on-site training involving instructors, videos or a hands-on demonstration.

(2) *Test subject material.* The certification tests must adequately and sufficiently address the following:

(i) Relevant standards established for the service and repair of motor vehicle air conditioners as included in the Appendix A and Appendix B (reserved) to this subpart. These standards cover the recommended service procedures for

the containment of refrigerant, extraction and recycle equipment, and the standard of purity for refrigerant in motor vehicle air conditioners.

(ii) Anticipated future technological developments, such as the introduction of HFC–134a in new motor vehicle air conditioners.

(iii) The environmental consequences of refrigerant release and the adverse effects of stratospheric ozone layer depletion.

(iv) The requirements imposed by the Administrator under section 609 of the Act.

(3) *Test Administration.* Completed tests must be sent to an independent testing authority for grading. Sufficient measures must be taken at the test site to ensure that tests are completed honestly by each technician. Each test must provide a means of verifying the identification of the individual taking the test. Programs should make provisions for non-English speaking technicians by providing tests in other languages or allowing the use of a translator when taking the test. If a translator is used, the certificate received must indicate that translator assistance was required.

(4) *Technical revisions.* Directors of certification programs must conduct periodic reviews of test subject material and update the material based upon the latest technological developments in motor vehicle air conditioner service and repair. A written summary of the review and any changes made should be submitted to the Administrator every two years.

(5) *Recertification.* The Administrator reserves the right to specify the need for technician recertification at some future date, if necessary.

(6) *Proof of Certification.* Each certification program must offer individual proof of certification, such as a certificate, wallet-sized card, or display card, upon successful completion of the test. Each certification program must provide a unique number for each certified technician.

(7) The Administrator reserves the right to consider other factors deemed relevant to ensure the effectiveness of certification programs.

(b) If approval is denied under this section, the Administrator shall give written notice to the program setting forth the basis for his determination.

(c) If at any time a program violates any of the above requirements, the Administrator reserves the right to revoke approval.

(d) Authorized representatives may require technicians to demonstrate on the business entity's premises their ability to perform proper procedures for recovering and/or recycling refrigerant. Failure to demonstrate or failure to properly use the equipment may result in revocation of the certificate. Technicians would need to recertify before servicing any motor vehicle air conditioners.

§ 82.42 Certification and recordkeeping requirements.

(a) *Certification requirements.* (1) No later than January 1, 1993, all persons repairing or servicing motor vehicle air conditioners for consideration shall certify to the Administrator that such person has acquired, and is properly using, approved equipment and that each individual authorized to use the equipment is properly trained and certified. The data elements for certification are as follows:

(i) The name of the purchaser of the equipment,

(ii) The address of the establishment where the equipment will be located,

(iii) The manufacturer name and model number, and date of manufacture, and the serial number of the equipment,

(iv) The owner of the equipment or another responsible officer must sign the certification stating that the equipment will be properly used in servicing motor vehicle air conditioners, that each individual authorized by the purchaser to perform service is properly trained and certified in accordance with § 82.40, and that the information given is true and correct. The certification should be sent to:

MACs Recycling Program Manager, Stratospheric Ozone Protection Branch, (ANR–445), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(2) No later than January 1, 1992, persons repairing or servicing motor vehicle air conditioners for consideration at an entity which performed service on fewer than 100 motor vehicle air conditioners in calendar year 1990 must so certify to the Administrator unless they acquire and properly use approved refrigerant recycling equipment under § 82.36. Persons must retain adequate records to demonstrate that the number of vehicles serviced was fewer than 100.

(3) Certificates of compliance are not transferable. In the event of a change of ownership of an entity which services motor vehicle air conditioners for consideration, the new owner of the entity shall certify within thirty days of the change of ownership pursuant to § 82.44(1)(a).

(b) *Recordkeeping requirements.* (1) All persons who own or operate approved refrigerant recycling equipment used to service motor vehicle air-conditioners for consideration must record on the invoice that service involving the refrigerant was performed. Invoices must also include the name, address and phone number of the vehicle owners, and the year, make, model and license plate numbers of the vehicles serviced, date of service, and the odometer reading on the vehicles.

(2) All persons who own approved refrigerant recycling equipment certified under § 82.36(a)(2) must maintain records of the amount of refrigerant that is recycled on-site or reclaimed off-site at a reclamation facility. The name and address of the reclamation facility and the date the refrigerant is sent or delivered to the reclamation facility must be recorded.

(3) All persons who own approved refrigerant recycling equipment used to service motor vehicle air-conditioners for consideration must keep a record of the amount of refrigerant purchased and consumed each month.

(4) All persons who own approved refrigerant recycling equipment must retain records demonstrating that all persons authorized to operate the equipment are currently certified under § 82.40.

(5) All persons who sell or distribute any class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air conditioner and is in a container of less than 20 pounds must require purchasers to attest in writing that they are properly trained and certified under § 82.40. This writing must include the name of the purchaser, the purchaser's technician certification number, the date of sale, and the number of cans purchased. The purchaser must retain invoices which indicate the quantity purchased. The only exception to this requirement is if the purchaser is purchasing the small containers for resale and in this case, the seller must receive a written statement from the purchaser that the cans are for resale only. Records must be retained for a period of three years.

(6) All persons who conduct any retail sale class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air conditioner and is in a container of less than 20 pounds must prominently display a sign which states: It is a violation of federal law to sell containers of Class I and Class II refrigerant of less than 20 pounds to anyone who is not properly trained and certified to operate approved refrigerant recycling equipment.

(7) All records required to be maintained pursuant to this section must be kept for a minimum of three years unless otherwise indicated. Entities

which service motor vehicle air conditioners for consideration must keep these records on-site.

(8) All entities which service motor vehicle air conditioners for consideration must allow an authorized representative of the administrator entry onto their premises (upon presentation of his credentials) and give the authorized representative access to all records required to be maintained pursuant to this section.

Appendix A to Subpart B—Standard for Recover/Recycle Equipment

STANDARD OF PURITY FOR USE IN MOBILE AIR-CONDITIONING SYSTEMS

SAE Standard, SAE J1991, Issued October 1989

Foreword: Due to the CFC's damaging effect on the ozone layer, recycle of CFC–12 (R–12) used in mobile air-conditioning systems is required to reduce system venting during normal service operations. Establishing recycle specifications for R–12 will assure that system operation with recycled R–12 will provide the same level of performance as new refrigerant.

Extensive field testing with the EPA and the auto industry indicate that reuse of R–12 removed from mobile air-conditioning systems can be considered, if the refrigerant is cleaned to a specific standard. The purpose of this standard is to establish the specific minimum levels of R–12 purity required for recycled R–12 removed from mobile automotive air-conditioning systems.

1. Scope

This information applies to refrigerant used to service automobiles, light trucks, and other vehicles with similar CFC–12 systems. Systems used on mobile vehicles for refrigerated cargo that have hermetically sealed, rigid pipe are not covered in this document.

2. References

SAE J1989, Recommended Service Procedure for the Containment of R–12
SAE J1990, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems
ARI Standard 700–88

3. Purity Specification

The refrigerant in this document shall have been directly removed from, and intended to be returned to, a mobile air-conditioning system. The contaminants in this recycled refrigerant 12 shall be limited to moisture, refrigerant oil, and noncondensable gases, which shall not exceed the following level:

3.1 *Moisture:* 15 ppm by weight.

3.2 *Refrigerant Oil:* 4000 ppm by weight.

3.3 *Noncondensable Gases (Air):* 330 ppm by weight.

4. Refrigeration Recycle Equipment Used in Direct Mobile Air-Conditioning Service Operations Requirement

4.1 The equipment shall meet SAE J1990, which covers additional moisture, acid, and filter requirements.

4.2 The equipment shall have a label indicating that it is certified to meet this document.

5. Purity Specification of Recycled R–12 Refrigerant Supplied in Containers From Other Recycle Sources

Purity specification of recycled R–12 refrigerant supplied in containers from other recycle sources, for service of mobile air-conditioning systems, shall meet ARI Standard 700–88 (Air Conditioning and Refrigeration Institute).

6. Operation of the Recycle Equipment

This shall be done in accordance with SAE J1989.

Rationale

Not applicable.

Relationship of SAE Standard to ISO Standard

Not applicable.

Reference Section

SAE J1989, Recommended Service Procedure for the Containment of R–12
SAE J1990, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems
ARI Standard 700–88

Application

This information applies to refrigerant used to service automobiles, light trucks, and other vehicles with similar CFC–12 systems. Systems used on mobile vehicles for refrigerated cargo that have hermetically sealed, rigid pipe are not covered in this document.

Committee Composition

Developed by the SAE Defrost and Interior Climate Control Standards Committee

W. J. Atkinson, Sun Test Engineering, Paradise Valley, AZ—Chairman
J. J. Amin, Union Lake, MI
H. S. Andersson, Saab Scania, Sweden
P. E. Anglin, ITT Higbie Mfg. Co., Rochester, MI
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R. J. Niemiec, General Motors Corp., Pontiac, MI
N. Novak, Chrysler Corp., Detroit, MI
S. Oulouhojian, Mobile Air Conditioning Society, Upper Darby, PA
J. Phillips, Air International, Australia
R. H. Proctor, Murray Corp., Cockeysville, MD
G. Rolling, Behr America Inc., Ft. Worth, TX
C. D. Sweet, Signet Systems Inc., Harrodsburg, KY
J. P. Telesz, General Motors Corp., Lockport, NY

EXTRACTION AND RECYCLE EQUIPMENT FOR MOBILE AUTOMOTIVE AIR-CONDITIONING SYSTEMS

SAE Recommended Practice, SAE J1990, Issued October 1989

Foreword: Due to the CFC's damaging effect on the ozone layer, recycle of CFC-12 (R-12) used in mobile air-conditioning systems is required to replace system venting during normal service operations. Establishing recycle specifications for R-12 will assure that system operation with recycled R-12 will provide the same level of performance as new refrigerant.

Extensive field testing with the EPA and the auto industry indicates that R-12 can be used, provided that it is cleaned to specifications in SAE J1991. The purpose of this document is to establish the specific minimum equipment specifications required for recycle of R-12 that has been directly removed from mobile systems for reuse in mobile automotive air-conditioning systems.

1. Scope

The purpose of this document is to provide equipment specifications for CFC-12 (R-12) recycling and/or recovery, and recharging systems. This information applies to equipment used to service automobiles, light trucks, and other vehicles with similar CFC-12 systems. Systems used on mobile vehicles for refrigerated cargo that have hermetically sealed systems are not covered in this document.

2. References

SAE J51, Automotive Air-Conditioning Hose
SAE J1991, Standard of Purity for Use in Mobile Air-Conditioning Systems
UL 1963 Section 40 Tests Service Hoses for Refrigerant-12 (Underwriters Laboratories)
Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases, LGA Pamphlet S-1.1

3. Specification and General Description

3.1 The equipment must be able to extract and process R–12 from mobile air-conditioning systems to purity levels specified in SAE J1991.

3.2 The equipment shall be suitable for use in an automotive service garage environment as defined in 7.8.

3.3 The equipment must be certified by Underwriters Laboratories or an equivalent certifying laboratory.

4. Refrigeration Recycle Equipment Requirements

4.1 *Moisture and Acid:* The equipment shall incorporate a desiccant package that must be replaced before saturated with moisture and whose acid capacity is at least 5% by weight of total system dry desiccant.

4.1.1 The equipment shall be provided with a moisture detection means that will reliably indicate when moisture in the R–12 exceeds the allowable level and requires the filter/dryer replacement.

4.2 *Filter:* The equipment shall incorporate an in-line filter that will trap particulates of 15 μm spherical diameter or greater.

4.3 *Noncondensable Gas:*

4.3.1 If the equipment has a self-contained recovery tank, a device is required to alert the operator that the noncondensable level has been exceeded.

4.3.2 *Transfer of Recycled Refrigerant:* Recycled refrigerant for recharging and transfer shall be taken from the liquid phase only.

5. Safety Requirements

5.1 The equipment must comply with applicable federal, state and local requirements on equipment related to the handling of R–12 material. Safety precautions or notices related to the safe operation of the equipment shall be prominently displayed on the equipment and should also state "Caution Should Be Operated By Qualified Personnel"

6. Operating Instructions

6.1 The equipment manufacturer must provide operating instructions, necessary maintenance procedures, and source information for replacement parts and repair.

6.2 The equipment must prominently display the manufacturer's name, address and any items that require maintenance or replacement that affect the proper operation of the equipment. Operation manuals must cover information for complete maintenance of the equipment to assure proper operation.

7. Functional Description

7.1 The equipment must be capable of ensuring recovery of the R–12 from the system being serviced, by reducing the system to a vacuum.

7.2 To prevent overcharge, the equipment must be equipped to protect the tank used to store the recycled refrigerant with a shutoff device and a mechanical pressure relief valve.

7.3 Portable refillable tanks or containers used in conjunction with this equipment must meet applicable Department of Transportation (DOT) or Underwriters Laboratories (UL) Standards and be adaptable to existing refrigerant service and charging equipment.

7.4 During the recovery and/or recycle, the equipment must provide overfill protection to assure that during filling or transfer, the tank or storage container cannot exceed 80% of volume at 70°F (21.1°C) of its maximum rating as defined by DOT standards, CFR Title 49 Part/Section 173.304 and American Society of Mechanical Engineers.

7.4.1 *Additional Storage Tank Requirements:*

7.4.1.1 The cylinder valve shall comply with the standard for cylinder valves, UL 1769.

7.4.1.2 The pressure relief device shall comply with the Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases, CGA Pamphlet S–1.1.

7.4.1.3 The tank assembly shall be marked to indicate the first retest date, which shall be 5 years after date of manufacture. The marking shall indicate that retest must be performed every subsequent 5 years. The marking shall be in letters at least 1/4 in high.

7.5 All flexible hoses must meet SAE J51 or UL 1963 Section 40.

7.6 Service hoses must have shutoff devices located within 12 in (30 cm) of the connection point to the system being serviced to minimize introduction of noncondensable gases into the recovery equipment and the release of the refrigerant when being disconnected.

7.7 The equipment must be able to separate the lubricant from recovered refrigerant and accurately indicate in 1 oz units (28 grams).

7.8 The equipment must be capable of continuous operation in ambient of 50 to 120°F (10 to 49°C).

7.9 The equipment must be compatible with leak detection material that may be present in the mobile AC system.

8. Testing

This test procedure and the requirements are used for evaluation of the equipment for its ability to clean the contaminated R–12 refrigerant.

8.1 The equipment shall clean the contaminated R–12 refrigerant to the minimum purity level as defined in SAE J1991, when tested in accordance with the following conditions:

8.2 For test validation, the equipment is to be operated according to the manufacturer's instructions.

8.3 The equipment must be preconditioned with 30 lb (13.6 kg) of the standard contaminated R–12 at an ambient of 70°F (21°C) before starting the test cycle. Sample amounts are not to exceed 2.5 lb (1.13 kg) with sample amounts to be repeated every 5 min. The sample method fixture, defined in Fig. 1, shall be operated at 75°F (24°C).

8.4 *Contaminated R–12 Samples:*

8.4.1 Standard contaminated R–12 refrigerant shall consist of liquid R–12 with 100 ppm (by weight) moisture at 70°F and 45 000 ppm (by weight) mineral oil 525 suspension viscosity nominal and 770 ppm by weight of noncondensable gases (air).

8.4.2 aHigh moisture contaminated sample shall consist of R–12 vapor with 1000 ppm (by weight) moisture.

8.4.3 High oil contaminated sample shall consist of R–12 with 200,000 ppm (by weight) mineral oil 525 suspension viscosity nominal.

8.5 *Test Cycle:*

8.5.1 After preconditioning as stated in 8.3, the test cycle is started, processing the following contaminated samples through the equipment:

8.5.1.1 30 lb (13.6 kg) of standard contaminated R–12.

8.5.1.2 2.2 lb (1 kg) of high oil contaminated R–12.

8.5.1.3 10 lb (4.5 kg) of standard contaminated R–12.

8.5.1.4 2.2 lb (1 kg) of high moisture contaminated R–12.

8.6 *Equipment Operating Ambient:*

8.6.1 The R–12 is to be cleaned to the minimum purity level, as defined in SAE J1991, with the equipment operating in a stable ambient of 50, 70, and 120°F (10, 21, and 49°C) and processing the samples as defined in 8.5.

8.7 *Sample Analysis:*

8.7.1 The processed contaminated samples shall be analyzed according to the following procedure.

8.8 *Quantitative Determination of Moisture:*

8.8.1 The cleaned sample of R–12 is to be subjected to a quantitative determination of the moisture content by Karl Fischer titration.

8.8.2 The apparatus employed is a Karl Fischer coulometer, an automated instrument for precise determination of small amounts of water. The weighed sample of liquid R–12 is introduced directly into the analyte of the Karl Fischer coulometer. A coulometric titration by the instrument is conducted and the results are calculated and displayed as parts per million moisture weight.

8.9 *Determination of Percent Oil:*

8.9.1 The amount of oil in the cleaned sample of R–12 is to be determined by gravimetric analysis.

8.9.2 A weighed 100 mL sample of the liquid R–12 is placed in a preweighed graduated Goetz phosphorous tube of 100 mL nominal capacity. The sample and containing tube are maintained in ambient air at a minimum temperature of 90°F (32°C) above the expected boiling point of the refrigerant. When 85 mL of the sample has evaporated, the tube is then immersed in a refrigerated brine bath at a temperature of 50°F (10°C) above the boiling point of the sample for 30 min. The residual sample, if any, is allowed to reach room temperature. The tube is reweighed and the percent of oil is calculated.

8.10 *Noncondensable Gas:*

8.10.1 The sample is to be analyzed using gas chromatography to determine the noncondensable gas content. The cleaned refrigerant is to be sampled in the liquid phase through a closed loop or by an airtight syringe into the injector.

8.11 *Sample Requirements:*

8.11.1 The sample shall be tested as defined in 8.7, 8.8, 8.9, and 8.10 at ambient temperatures of 50, 70, and 120°F (10, 21, and 49°C) as defined in 8.6.1.

9. Date of Effectiveness

This recommended practice will become a standard after one year.

BILLING CODE 6560–50–M

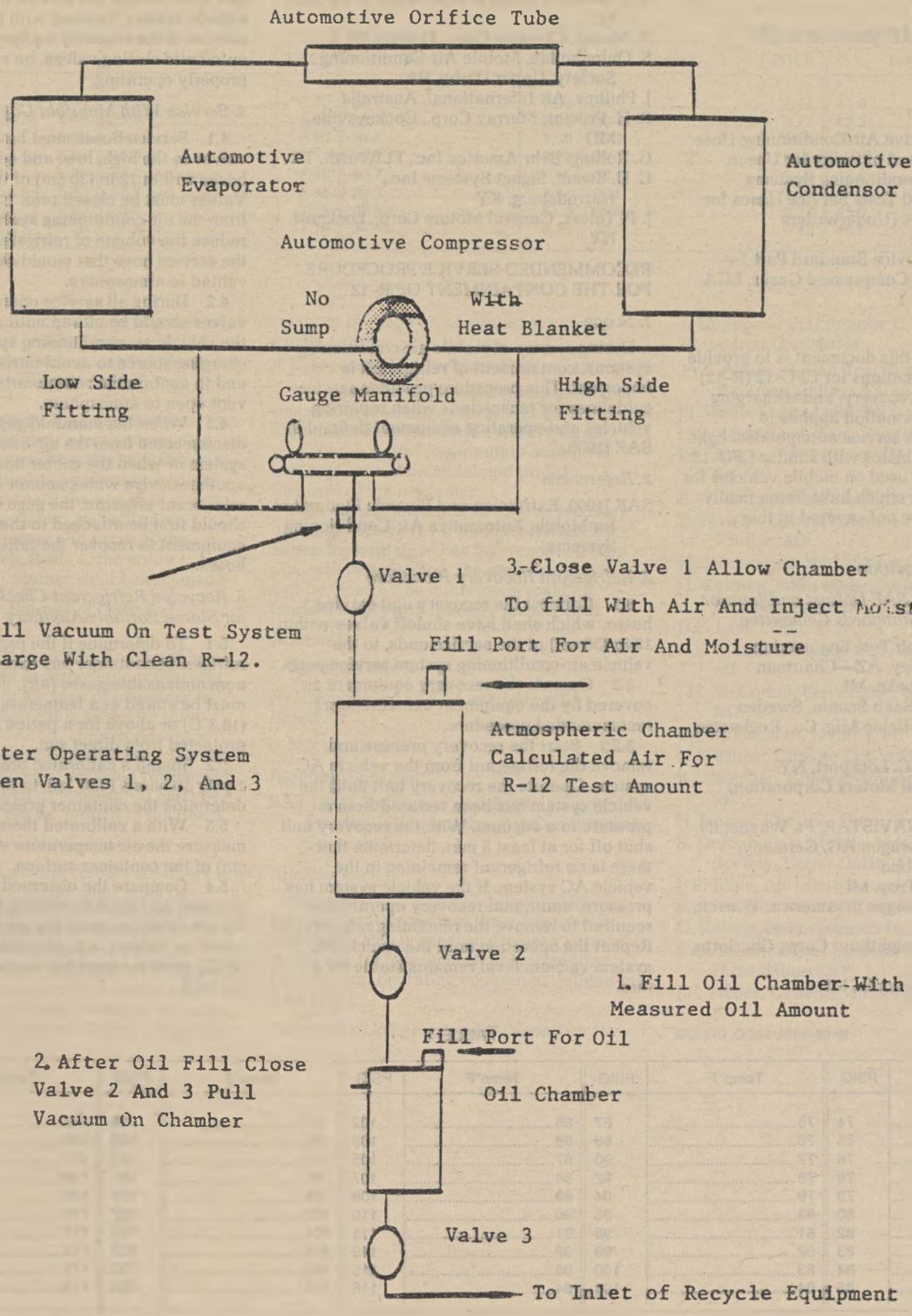

FIGURE 1

BILLING CODE 6560-50-C

Rationale

Not applicable.

Relationship of SAE Standard to ISO Standard

Not applicable.

Reference Section

SAE J51, Automotive Air-Conditioning Hose
SAE J1991, Standard of Purity for Use in Mobile Air-Conditioning Systems
UL 1963 Section 40 Tests Service Hoses for Refrigerant–12 (Underwriters Laboratories)
Pressure Relief Device Standard Part 1—Cylinders for Compressed Gases, LGA Pamphlet S–1.1

Application

The purpose of this document is to provide equipment specifications for CFC–12 (R–12) recycling and/or recovery, and recharging systems. This information applies to equipment used to service automobiles, light trucks or other vehicles with similar CFC–12 systems. Systems used on mobile vehicles for refrigerated cargo which have hermetically sealed systems are not covered in this document.

Committee Composition

Developed by the SAE Defrost and Interior Climate Control Standards Committee

W. J. Atkinson, Sun Test Engineering, Paradise Valley, AZ—Chairman
J. J. Amin, Union Lake, MI
H. S. Andersson, Saab Scania, Sweden
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C. D. Sweet, Signet Systems Inc., Harrodsburg, KY
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RECOMMENDED SERVICE PROCEDURE FOR THE CONTAINMENT OF R–12

1. Scope

During service of mobile air-conditioning systems, containment of refrigerant is important. This procedure provides service guidelines for technicians when repairing vehicles and operating equipment defined in SAE J1990.

2. References

SAE J1990, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems

3. Refrigerant Recovery Procedure

3.1 Connect the recovery unit service hoses, which shall have shutoff valves within 12 in (30 cm) of the service ends, to the vehicle air-conditioning system service ports.

3.2 Operate the recovery equipment as covered by the equipment manufacturers recommended procedure.

3.2.1 Start the recovery process and remove the refrigerant from the vehicle AC system. Operate the recovery unit until the vehicle system has been reduced from a pressure to a vacuum. With the recovery unit shut off for at least 5 min, determine that there is no refrigerant remaining in the vehicle AC system. If the vehicle system has pressure, additional recovery operation is required to remove the remaining refrigerant. Repeat the operation until the vehicle AC system vacuum level remains stable for 2 min.

3.3 Close the valves in the service lines and then remove the service lines from the vehicle system. Proceed with the repair/service. If the recovery equipment has automatic closing valves, be sure they are properly operating.

4. Service With Manifold Gage Set

4.1 Service hoses must have shutoff valves in the high, low, and center service hoses within 12 in (30 cm) of the service ends. Valves must be closed prior to hose removal from the air-conditioning system. This will reduce the volume of refrigerant contained in the service hose that would otherwise be vented to atmosphere.

4.2 During all service operations, the valves should be closed until connected to the vehicle air-conditioning system or the charging source to avoid introduction of air and to contain the refrigerant rather than vent open to atmosphere.

4.3 When the manifold gage set is disconnected from the air-conditioning system or when the center hose is moved to another device which cannot accept refrigerant pressure, the gage set hoses should first be attached to the reclaim equipment to recover the refrigerant from the hoses.

5. Recycled Refrigerant Checking Procedure for Stored Portable Auxiliary Container

5.1 To determine if the recycled refrigerant container has excess noncondensable gases (air), the container must be stored at a temperature of 65°F (18.3°C) or above for a period of time, 12 h, protected from direct sun.

5.2 Install a calibrated pressure gage, with 1 psig divisions (0.07 kg), to the container and determine the container pressure.

5.3 With a calibrated thermometer, measure the air temperature within 4 in (10 cm) of the container surface.

5.4 Compare the observed container pressure and air temperature to determine if the container exceeds the pressure limits found on Table 1, e.g., air temperature 70°F (21°C) pressure must not exceed 80 psig (5.62 kg/cm²).

TABLE 1

Temp°F	PSIG	Temp°F	PSIG	Temp°F	PSIG	Temp°F	PSIG	Temp°F	PSIG
65	74	75	87	85	102	95	118	105	136
66	75	76	88	86	103	96	120	106	138
67	76	77	90	87	105	97	122	107	140
68	78	78	92	88	107	98	124	108	142
69	79	79	94	89	108	99	125	109	144
70	80	80	96	90	110	100	127	110	146
71	82	81	98	91	111	101	129	111	148
72	83	82	99	92	113	102	130	112	150
73	84	83	100	93	115	103	132	113	152
74	86	84	101	94	116	104	134	114	154

TABLE 1

[Metric]

Temp°C	PRES	Temp°C	PRES	Temp°C	PRES	Temp°C	PRES	Temp°C	PRES
18.3	5.20	23.9	6.11	29.4	7.17	35.0	8.29	40.5	9.56
18.8	5.27	24.4	6.18	30.0	7.24	35.5	8.43	41.1	9.70

TABLE 1—Continued

[Metric]

Temp°C	PRES	Temp°C	PRES	Temp°C	PRES	Temp°C	PRES	Temp°C	PRES
19.4	5.34	25.0	6.32	30.5	7.38	36.1	8.57	41.6	9.84
20.0	5.48	25.5	6.46	31.1	7.52	36.6	8.71	42.2	9.98
20.5	5.55	26.1	6.60	31.6	7.59	37.2	8.78	42.7	10.12
21.1	5.62	26.6	6.74	32.2	7.73	37.7	8.92	43.3	10.26
21.6	5.76	27.2	6.88	32.7	7.80	38.3	9.06	43.9	10.40
22.2	5.83	27.7	6.95	33.3	7.94	38.8	9.13	44.4	10.54
22.7	5.90	28.3	7.03	33.9	8.08	39.4	9.27	45.0	10.68
23.3	6.04	28.9	7.10	34.4	8.15	40.0	9.42	45.5	10.82

PRES kg/sq cm

5.5 If the container pressure is less than the Table 1 values and has been recycled, limits of noncondensable gases (air) have not been exceeded and the refrigerant may be used.

5.6 If the pressure is greater than the range and the container contains recycled material, slowly vent from the top of the container a small amount of vapor into the recycle equipment until the pressure is less than the pressure shown on Table 1.

5.7 If the container still exceeds the pressure shown on Table 1, the entire contents of the container shall be recycled.

6. Containers for Storage of Recycled Refrigerant

6.1 Recycled refrigerant should not be salvaged or stored in disposable refrigerant containers. This is the type of container in which virgin refrigerant is sold. Use only DOT CFR Title 49 or UL approved storage containers for recycled refrigerant.

6.2 Any container of recycled refrigerant that has been stored or transferred must be checked prior to use as defined in Section 5.

7. Transfer of Recycled Refrigerant

7.1 When external portable containers are used for transfer, the container must be evacuated to at least 27 in of vacuum (75 mm Hg absolute pressure) prior to transfer of the recycled refrigerant. External portable containers must meet DOT and UL standards.

7.2 To prevent on-site overfilling when transferring to external containers, the safe filling level must be controlled by weight and must not exceed 60% of container gross weight rating.

8. Disposal of Empty/Near Empty Containers

8.1 Since all the refrigerant may not be removed from disposable refrigerant containers during normal system charging procedures, empty/near empty container contents should be reclaimed prior to disposal of the container.

8.2 Attach the container to the recovery unit and remove the remaining refrigerant. When the container has been reduced from a pressure to a vacuum, the container valve can be closed. The container should be marked empty and is ready for disposal.

Rationale

Not applicable.

Relationship of SAE Standard to ISO Standard

Not applicable.

Reference Section

SAE J1990, Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems

Application

During service of mobile air-conditioning systems, containment of the refrigerant is important. This procedure provides service guidelines for technicians when repairing vehicles and operating equipment defined in SAE J1990.

Committee Composition Developed by the SAE Defrost and Interior Climate Control Standards Committee

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N. Novak, Chrysler Corp., Detroit, MI
S. Oulouhojian, Mobile Air Conditioning Society, Upper Darby, PA
J. Phillips, Air International, Australia
R.H. Proctor, Murray Corp., Cockeysville, MD
G. Rolling, Behr America Inc., Ft. Worth, TX
C.D. Sweet, Signet Systems Inc., Harrodsburg, KY
J.P. Telesz, General Motors Corp., Lockport, NY

BILLING CODE 6560-50-M

MAC RECOVER/RECYCLE EQUIPMENT CERTIFICATION FORM

1 _____
Name of Establishment

_____
Street

_____
City, State, Zip Code

_____
(Area Code) Telephone Number

2 _____
Name of Equipment Manufacturer and Model Number

_____
Serial Number(s) Year

3 **I certify that I have acquired approved recover/recycle equipment under Section 609 of the Clean Air Act. I certify that only properly trained and certified technicians operate the equipment and that the information given above is true and correct.**

_____ _____
Signature of Owner/Operator Date

_____
Name (Please Print) Title

4 **Small Entity Certification.**

I certify that fewer than 100 jobs involving refrigerant were performed at the establishment named in Part 1 of this form during 1990. I will purchase approved equipment and certify this to EPA by January 1, 1993.

_____ _____
Signature Date

_____ _____
Name (Please Print) Title

Send this form to:
MACs Recycling Program Manager
Stratospheric Ozone
Protection Branch
(ANR-445)
401 M Street, S.W.
Washington, D.C. 20460

MAC RECOVER/RECYCLE EQUIPMENT CERTIFICATION FORM INSTRUCTIONS

Motor vehicle recover/recycle equipment must be aquired by January 1,1992 and certified to EPA on or before January 1, 1993 under Section 609 of the Clean Air Act. To certify your equipment, please complete the above form according to the following instructions and mail to EPA at the following address: MACs Recycling Program Manager, Stratospheric Ozone Protection Branch, (ANR-445), 401 M Street, S.W., Washington , D.C. 20460.

1 *Please provide the name, address and telephone number of the establishment where the recover/recycle equipment is located.*

2 *Please provide the name brand, model number, year, and serial number(s) of the recover/recycle equipment acquired for use at the above establishment.*

3 *The certification statement must be signed by the person who has acquired the recover/recycle equipment (the person may be the owner of the establishment or another responsible officer). The person who signs is certifying that tney have acquired the equipment, that each individual authorized to use the equipment is properly trained and certified, and that the information provided is true and correct.*

4 Small Entity Certification. *Service establishments that serviced fewer than 100 jobs involving refrigerant during 1990 are not required to purchase equipment until January 1, 1993. To qualify for this one year extension, the owner must fill out Part 1, sign the statement in Part 4 above, and send this form to EPA. Upon inspection, the owner must be able to prove it serviced fewer than 100 jobs in 1990. Small entities must buy approved equipment and certify to EPA by January 1, 1993.*

Appendix B to Subpart B—Standard for Recover Equipment [Reserved]

[FR Doc. 91-20624 Filed 9-3-91; 8:45 am]
BILLING CODE 6560-50-C

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Federal Register

Vol. 56, No. 171

Wednesday, September 4, 1991

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102d Congress, 1st Session, 1991

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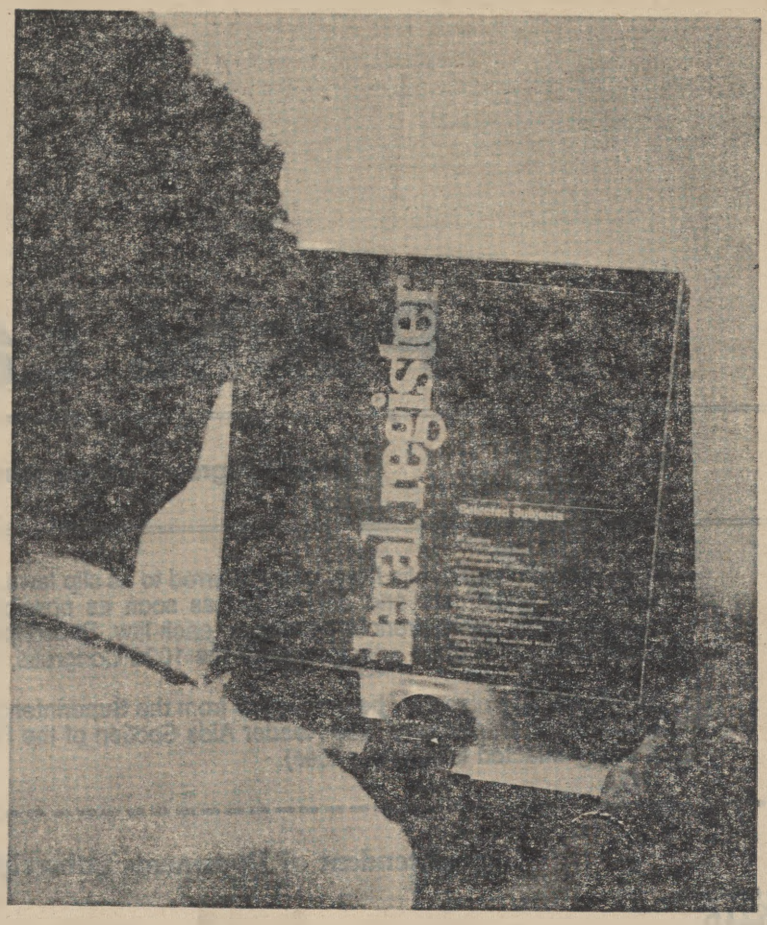

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