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Briefings on How To Use the Federal Register
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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

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Electronic Bulletin Board

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 307

RIN 3206–AE59

Veterans Readjustment Appointments

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: This interim rule reflects statutory changes in the Veterans Readjustment Appointment (VRA) authority. On October 29, 1992, the President signed the Veterans' Benefits Act of 1992, which includes a provision to restore eligibility to Vietnam-era veterans for Federal employment under the VRA authority. The new law puts Vietnam-era service on equal footing with post-Vietnam-era service in qualifying for the VRA program, simplifies the eligibility requirements, and enables Federal agencies to make greater use of the VRA authority by expanding the pool of VRA eligibles.

DATES: Effective: March 3, 1993. Comments must be received on or before April 3, 1993.

ADDRESSES: Send or deliver comments to: Leonard R. Klein, Associate Director for Career Entry, Career Entry Group, U.S. Office of Personnel Management, room 6F08, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: John Flannery, (202) 606–2677.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) has responsibility for implementing the VRA program as provided by the initial statute, the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4214). Accordingly, OPM is required by law to issue and amend regulations governing the VRA program.

The VRA program reflects the nation's continuing interest in enhancing employment opportunities for Vietnam-era and post-Vietnam-era veterans. The VRA program is intended to meet the unique needs of veterans in the labor market, and to enable Federal agencies to hire needed talent quickly.

The VRA is an excepted appointment to a position otherwise in the competitive service that, prior to the Veterans' Benefits Act of 1992, Public Law 102–568, had been available to most post-Vietnam-era veterans but only to those Vietnam-era veterans who have a compensable service-connected disability, a separation from active duty for a disability incurred or aggravated in the line of duty, or a campaign or expeditionary medal for service during the Vietnam era. The new law eliminates those restrictions on Vietnam-era veterans. The term "Vietnam era" refers to the period beginning August 5, 1964, and ending on May 7, 1975; the term "post-Vietnam era" refers to the period after May 7, 1975.

The VRA program was established in 1970 to help recently discharged Vietnam-era veterans who lacked marketable skills "readjust" by making it easier for them to obtain civil service employment. The VRA authority has been amended at various times over the years, with the primary concern being to provide a helping hand to the more recent service members. However, there was concern that the amendments of 1989 and 1991 to extend the program to veterans serving after the Vietnam era had an adverse impact on Vietnam-era veterans by restricting their eligibility. As a result, the Office of Personnel Management asked Congress to put Vietnam-era service on equal footing with post-Vietnam-era service as qualifying for the VRA program. Congress agreed, passed the authorizing bill, and the President signed it into law.

The regulations are also amended to reflect the modification of the definitions of VRA eligibility made by Public Laws 102–16 and 102–127.

Because the VRA law (38 U.S.C. 4214) specifies the time limits on VRA eligibility, maximum entry grade level, the development of education/training agreements by agencies, and other matters, those requirements are not repeated in the regulations. Following regular practice, OPM will continue to provide instructions, information, and guidance to agencies through the Federal Personnel Manual (FPM) system.

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and making this effective immediately upon publication. The regulation is being made effective immediately to ensure maximum consistency with Public Law 102–568, which became effective October 29, 1992.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined in E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal Government employment practices.

List of Subjects in 5 CFR Part 307

Government employees, Veterans.

U.S. Office of Personnel Management.
Patricia W. Lattimore,
Acting Director.

Accordingly, OPM is revising 5 CFR part 307 to read as follows:

PART 307—VETERANS READJUSTMENT APPOINTMENTS

1. The authority citation for part 307 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 11521, 3 CFR, 1970 Comp., p. 912; 38 U.S.C. 4214.

2. Section 307.101 is revised to read as follows:

§ 307.101 Definitions.

In this part,

(a) The term *veteran* has the meaning given in section 4211 (2)(A), (3) and (4) of title 38, United States Code, as follows:

(1) *Veteran of the Vietnam era* means an eligible veteran any part of whose active military, naval, or air service was during the Vietnam era.

(2) *Disabled veteran* means:

(i) A veteran who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Department of Veterans Affairs; or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

(3) *Eligible veteran* means a person who:

(i) Served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge; or

(ii) Was discharged or released from active duty because of a service-connected disability; or

(iii) As a member of a reserve component under an order to active duty pursuant to section 672(a), (d), or (g), 673, or 673b of title 10 of the United States Code, served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from such duty with other than a dishonorable discharge.

(b) *Post-Vietnam-era veteran* means an eligible veteran who first became a member of the Armed Forces or first entered on active duty as a member of the Armed Forces after May 7, 1975.

(c) *Vietnam era* means the period beginning August 5, 1964 and ending May 7, 1975.

(d) *Veterans readjustment appointment (VRA)* is an excepted appointment made after April 8, 1970, under this part, to a position otherwise in the competitive service of eligible veterans of the Vietnam era and the post-Vietnam era.

3. Section 307.102 is revised to read as follows:

§ 307.12 Coverage and general responsibilities.

(a) Federal agencies have the responsibility to provide the maximum of employment and job advancement opportunities to eligible veterans of the Vietnam era and the post-Vietnam era who are qualified for such employment and advancement.

(b) Employees with VRA appointments who satisfactorily complete two years of substantially continuous service under the VRA program, including training when required, shall be converted to career-conditional or career employment, as appropriate.

(c) The Office of Personnel Management will prescribe instructions and guidance for implementing the VRA program through the Federal Personnel Manual (FPM) system.

4. Section 307.103 is revised to read as follows:

§ 307.103 Appointing authority.

An agency may appoint any veteran who meets the basic veterans readjustment eligibility requirements provided by law as follows:

(a) Vietnam-era veteran who is disabled;

(b) Vietnam-era veteran who is nondisabled;

(c) Post-Vietnam-era veteran who is disabled;

(d) Post-Vietnam-era veteran who is nondisabled.

[FR Doc. 93–4797 Filed 3–2–93; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 532

RIN 3220–AF11

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to add San Patricio County, Texas, as an area of application to the Nueces, Texas, Nonappropriated Fund (NAF) wage area for pay-setting purposes. The Department of the Navy recently commissioned a Naval Base in Ingelside, Texas. Ingelside Naval Base is located in San Particio County, which is not currently defined for NAF pay-setting purposes. The intent of this action is to assign San Patricio County to the proper NAF wage area for pay-setting purposes.

EFFECTIVE DATE: April 2, 1993.

FOR FURTHER INFORMATION CONTACT: Brenda Roberts, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On September 30, 1992, OPM published a proposed rule to add San Patricio County, Texas, to the Nueces, Texas, wage area as an area of application (57 FR 45005). No comments were received during the 30-day comment period. The proposed rule, therefore, is being adopted as a final rule without any changes.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

2. Appendix D to subpart B is amended by revising the area of application listing for the Nueces, Texas, wage area to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas.

* * * * *

Texas

* * *

Nueces

* * *

Area of Application. Survey area plus:

Texas:
Bee
Calhoun
Kleberg
San Patricio
Webb

* * * * *

[FR Doc. 93–4796 Filed 3–2–93; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 208, 209, and 274a

[INS No. 1347–92; AG Order No. 1651–93]

RIN 1115–AC93

Fees for Processing Certain Asylee/Refugee Related Applications

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule enables the Immigration and Naturalization Service (Service) and the Executive Office for Immigration Review (EOIR) to charge fees for the processing of certain asylee-related and refugee-related applications. The Service intends to charge asylees for applications for adjustment of status to permanent residence pursuant to 8 CFR 209.2 upon submission of Form I–485, Application for Permanent Residence, and upon submission of Form I–765, Application for

Employment Authorization, for renewal of their employment authorization. The Service believes it is necessary to charge asylees both for applications for adjustment to permanent residence and for renewal of work authorization so that the Service and other applicants will not have to bear the financial burden of providing special services that do not accrue to the public at large. Presumably, the asylee who is applying for these benefits has already been employed and is better able to pay a fee than at the time of his or her arrival and initial application for work authorization. If the asylee applicant is unable to pay either fee, there is a waiver provision contained in 8 CFR 103.7(c).

EFFECTIVE DATE: March 18, 1993.

FOR FURTHER INFORMATION CONTACT: Barbara Atherton, Chief, Fee Analysis and Operations Branch, Immigration and Naturalization Service, 425 I Street NW., room 6240, Washington, DC 20536, telephone (202) 514-2677.

SUPPLEMENTARY INFORMATION: The Service published a proposed rule on January 14, 1992, at 57 FR 1404, to amend the schedule of fees charged by the Service and EOIR for processing certain asylee-related and refugee-related applications. Comments were received from 83 commenters, including volunteer service agencies, private immigration attorneys, elected and appointed officials, attorney organizations, private citizens, and Service employees. All of the comments were carefully considered before preparing this final rule. The following is a summary of the substantive comments.

The overwhelming majority of commenters opposed the fees. Two commenters expressed general support for the proposal as a means of having applicants pay for special services rendered to them.

Forty-eight commenters specifically opposed the fee for Form I-730, the Refugee/Asylee Relative Petition. The majority of these commenters believed that most of these applicants would not be able to pay the I-730 application fee, implying that the inability to pay the fee would cause a delay in the family reunification process. Such a delay might, in turn, contradict the humanitarian spirit of the asylum programs and a fundamental principle underlying immigration law, the principle of family reunification. Although a provision for waiving fees exists for truly needy cases (see 8 CFR 103.7(c)), such a fee requirement and waiver request could delay the family reunification process.

Thirty-two commenters submitted identical or similar comments and/or suggested changes to the proposed fees and processing changes. Specifically, they suggested that:

(1) Establishing a fee from Form I-730 is inappropriate, as it contradicts the humanitarian spirit of refugee and asylum programs, as well as a fundamental principle of immigration law, namely, family reunification.

(2) Requiring refugees and asylees to pay a fee for adjustment of status is inconsistent with the goals of refugee protection and burdensome for persons and families who are likely to be unable to pay such a fee.

(3) District directors should not be granted discretion in the issuance of work authorization because the new asylum regulations contained at 8 CFR 208.7(a) state that non-frivolous asylum applicants shall be granted work authorization.

(4) Regulations and the revised Form I-765 should clearly state that a fee will be charged for renewals of work authorization and that fee waivers are available to those who cannot afford the renewal fee.

(5) Charging asylum applicants for renewal of their Employment Authorization Documents could create confusion for Immigration and Naturalization Service staff.

The following is the Service's response to these comments:

(1) The Service disagrees that there was any intent on the part of the agency to subvert the humanitarian spirit of refugee and asylum programs by charging a fee for filing Form I-730. Periodically, the Service and EOIR review the fee structure of immigration programs in order to remain in compliance with 31 U.S.C. 9701 and Office of Management and Budget (OMB) Circular A-25. Section 9701 authorizes the Attorney General to establish a fee for services provided by the Service and EOIR so that the services will be "self-sustaining to the extent possible." The amount of each fee must be fair and based upon the direct and indirect costs to the Government of providing the service, the value of the service to the recipient, the public policy served by these programs, and other pertinent facts. This is what the Service intended to do by establishing a fee for Form I-730 in the amount of $75.00. However, upon review, the Service has decided not to charge a fee for the I-730 because the Service recognizes that the fee might compromise the Service's commitment to family reunification. Unlike some benefits sought by asylees, a relative petition may be filed at a time when the asylee has recently arrived in the United States and is most unlikely to be financially self-sufficient. Therefore, the fee requirement has been eliminated in furtherance of the agency's commitment to promote family reunification and in light of the special circumstances of refugees and asylees.

(2) The Service has weighed the public policy interest in encouraging asylees to adjust their status to that of lawful permanent resident aliens under 8 CFR 209.2(a) against its legitimate interest in complying with the provisions of 31 U.S.C. 9701 and OMB A-25 regarding fees for special services and benefits and programs which are "self-sustaining to the extent possible." The Service finds no evidence that asylees who have been living in the United States for one year or more and have had time to establish themselves and who are authorized to work are more likely to be impoverished than any other class of benefit applicants. It would, therefore, be unfair to treat such applicants differently from other similarly situated applicants, especially in light of the fact that such treatment would effectively require these other benefit applicants to absorb the cost of the services provided without fee to the adjusting asylees. Any asylee who has been unable to acquire sufficient resources to pay the application fee for adjustment of status within a year after the grant of asylum will qualify for a fee waiver under § 103.7.

Although it is true that persons admitted as refugees, unlike asylees, are not required to pay a fee with an application for adjustment of status, this is because refugees do not file such applications. Rather, section 209(a) of the Immigration and Nationality Act provides that one year after admission as a refugee, an alien admitted in such status is automatically returned to the custody of the Service for inspection and examination to the United States as an immigrant. In contrast, section 209(b) provides that an asylee may be adjusted to permanent resident status only after he or she applies for such adjustment. This final rule affords applicants for adjustment of status who are asylees treatment as favorable as that afforded other applicants for this benefit.

(3) The Service agrees with the commenters that the proposed change to 8 CFR 274a.13(a) authorizing a district director to exercise discretion over an application for work authorization, filed in relation to an asylum claim, contradicts 8 CFR 208.7(a), which mandates that an asylum officer adjudicate an initial request for work authorization filed in relation to an asylum claim. In fact, asylum officers

have no discretion under 8 CFR 208.7(a) to deny a request for work authorization if the asylum application is not frivolous. Therefore, 8 CFR 274a.13(a) is being amended in this final rule to eliminate this apparent contradiction. The Service also agrees that the renewal of employment authorization filed in relation to a claim for asylum under 8 CFR 208.7(c) is not discretionary and that a request to renew work authorization should be granted by the district director if the alien has a pending asylum claim. Therefore, 8 CFR 274a.13 is being amended in this final rule to eliminate this apparent inconsistency. Furthermore, there is no provision in the regulations which allows for an "extension" of work authorization filed in relation with a claim for asylum. Instead, there is a provision in the regulations which allows for a "renewal" of work authorization under 8 CFR 208.7(c). Therefore, in the final rule the words "or extension" in the phrase "an application for renewal or extension of employment authorization" which were included in proposed § 274a.13(a) have been removed.

(4) The final regulations retain the language of the proposed rule which clearly indicates that only renewal, and not initial, Employment Authorization Document applications are required to be filed with a fee, and any revision to the Form I–765 itself will indicate the same. One commenter suggested that the proposed rule presumed that, once granted employment authorization, asylees and refugees can maintain gainful employment permanently. The commenter also suggested that many asylees and refugees lack the basic language and employment skills necessary to locate and retain employment. Although this may well be true of some asylees as well as of some aliens in other immigration classifications, the fee waiver provision of § 103.7 is applicable to such cases. This same commenter also expressed concern that the imposition of fees for the renewal of employment authorization will result in disparate treatment between refugees and asylum applicants, since refugees would not be required to pay the renewal fee if they adjust their status to that of lawful permanent resident aliens after one year of maintaining physical presence in the United States. However, persons granted refugee status have already established their claim of persecution and, therefore, their right to remain in the United States. Asylum applicants are still pursuing their claims and, therefore, are not entitled to the same employment authorization benefits as refugees who have adjusted to lawful permanent residence. The final rule affords identical treatment to asylees and refugees, in that each may adjust his or her status to that of lawful permanent resident (and thereby avoid the need to pay fees for future employment authorization) one year after attaining the status of asylee or being admitted as a refugee.

Finally, one commenter expressed fear that significant, undue delays in granting renewals of employment authorization may result if fees are required. The Service does not anticipate that the submission of a fee will significantly delay the processing of request for renewals, and it will make every effort to issue employment authorization in a timely manner.

(5) The Service staff will be instructed and trained to implement this new fee program.

Several of the commenters suggested that the Service fee accounts are being balanced at the expense of asylees and refugees, that the Service has not explained the methodology used to determine the fee, and that the Service has failed to demonstrate a need to charge the proposed fee.

The methods and procedures used to conduct this fee review were consistent with those used in prior reviews. The formula used to determine new fees contains several elements. Direct and indirect officer and clerical costs per application are first calculated. Added to that are actual and projected general expense costs divided equally among the total projected volume of cases. Finally, the costs of non-revenue work are included.

Several commenters asserted that the Service listed the cost associated with non-revenue programs, such as the refugee and asylum programs, as one of the reasons for across-the-board fee increases in recent months. The actual amount of non-revenue asylum costs included in prior fee increases was a per application surcharge of $2.59. That amount represented unreimbursed program costs, not costs associated with the actual processing of applications, as is the case in this rulemaking.

Finally, this final rule states that the initial application for an Employment Authorization Document (Form I–765) for asylum applicants under § 274a.12(c)(8) may be filed either with the asylum office having jurisdiction over the asylum application or with any other designated Service office. An application for renewal of employment authorization shall be filed with the district director having jurisdiction over the applicant's residence, with the district director having jurisdiction over the port of entry at which the alien applies, or with such other Service office as shall be designated by the Commissioner.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of E.O. 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 209

Aliens, Immigration, Refugees.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

1. The authority citation for part 208 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 31 U.S.C. 9701; 8 CFR part 2.

§ 208.7 [Amended]

2. In § 208.7, paragraph (c), introductory text, the first sentence is amended by revising the phrase "Form I–765" to read "Form I–765, with fee,".

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

3. The authority citation for part 209 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, and 1159; 31 U.S.C. 9701.

4. In § 209.2, paragraph (c), the first sentence is revised to read as follows:

§ 209.2 Adjustment of status of alien granted asylum.

* * * * *

(c) *Application.* An application for the benefits of section 209(b) of the Act may be filed on Form I–485, with fee, with the district director having jurisdiction over the applicant's place of residence.* * *

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

5. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

6. In § 274a.13, paragraph (a) is revised to read as follows:

§ 274a.13 Application for employment authorization.

(a) *General.* An application for employment authorization (Form I–765) by an alien under § 274a.12(a) (3)–(8) and (10)–(13), and under § 274a.12(c) of this part, except for § 274a.12(c)(8), shall be filed in accordance with the instructions on Form I–765 with the district director having jurisdiction over the applicant's residence, or the district director having jurisdiction over the port of entry at which the alien applies, or with such other Service office as the Commissioner may designate. The approval of such an application for employment authorization shall be within the discretion of the district director. Where economic necessity has been identified as a factor, the alien must provide information regarding his or her assets, income, and expenses in accordance with instructions on Form I–765. An initial application for employment authorization (Form I–765) for asylum applicants under § 274a.12(c)(8) of this part shall be filed in accordance with the instructions on or attached to Form I–765 with the regional service center, with the district director having jurisdiction over the applicant's residence, with the district director having jurisdiction over the port of entry at which the alien applies, with the asylum office having jurisdiction over the asylum claim or with such other Service office as the Commissioner may designate. An application for renewal of employment authorization submitted in relation to a pending claim for asylum, as provided for in 8 CFR 208.7, shall be filed in accordance with the instructions on or attached to Form I–765 with the asylum office having jurisdiction over the asylum application, with the district director having jurisdiction over the applicant's residence, with the district director having jurisdiction over the port of entry at which the alien applies, or with such other Service office as the Commissioner may designate. An application for an initial employment authorization or for a renewal of employment authorization filed in relation to a pending claim for asylum shall be adjudicated in accordance with 8 CFR 208.7.

* * * * *

Dated: February 22, 1993.

Stuart M. Gerson,

Acting Attorney General.

[FR Doc. 93–4585 Filed 3–2–93; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB18

Statement of Policy on Risk-Based Capital; Presold Residential Construction Loans

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its risk-based capital guidelines to lower from 100 percent to 50 percent the risk weight assigned to certain loans to builders to finance the construction of presold one-to-four family residential properties. This amendment will implement section 618(a) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991. This amendment is intended to facilitate lending to creditworthy builders to finance the construction of presold homes.

EFFECTIVE DATE: December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Chief, Accounting Section, Division of Supervision, (202) 898–8906, or Walter P. Doyle, Counsel, Legal Division, (202) 898–3682, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 1989, the Board of Directors of the FDIC adopted a Statement of Policy on Risk-Based Capital (12 CFR part 325, appendix A, later redesignated as appendix A to subpart A of part 325) which is applicable to all insured state nonmember banks supervised by the FDIC (54 FR 11500). The Office of the Comptroller of the Currency (OCC) and the Federal Reserve Board (FRB) have also adopted similar risk-based capital standards for the banks under their supervision. In addition, the Office of Thrift Supervision (OTS) has implemented risk-based capital rules for savings associations.

Under the FDIC's risk-based capital framework, a bank's balance sheet assets and the credit equivalent amounts of its off-balance sheet items are assigned to one of four broad risk categories—0, 20, 50, or 100 percent—according to the obligor or, if relevant, the guarantor or the nature of the collateral. In this regard, the Basle Accord, the international agreement upon which the FDIC's risk-based capital guidelines are based, affords member countries the discretion to assign a 50 percent risk weight to loans secured by residential properties provided that the loans are fully secured by mortgages on residential property that is rented or is (or is intended to be) occupied by the borrower and the risk weight is applied in accordance with strict prudential criteria.

Thus, the FDIC's risk-based capital guidelines allow loans secured by one-to-four family residential properties that meet certain criteria to qualify for the 50 percent risk category. More specifically, the guidelines state that in order for such a loan to be accorded a 50 percent risk weight, it must be a first lien, must have been approved in accordance with prudent underwriting standards (including standards relating to the loan amount as a percent of the appraised value of the property), and must not be past due 90 days or more or carried in nonaccrual status. In contrast, loans to builders to finance the construction of residential properties that have been presold to purchasers who intend to occupy the property have been assigned to the 100 percent risk category in the FDIC's risk-based capital guidelines on the basis of the perceived inherent riskiness of these loans. Nevertheless, under the Basle Accord, such loans could at national discretion be assigned a 50 percent risk weight if strict prudential criteria are met.

After the risk-based capital guidelines were adopted, the FDIC, the OCC, the FRB, and the OTS (collectively, the banking agencies) reexamined the issue of the captial treatment of residential mortgages. Specifically, the banking agencies began to consider whether a 50 percent risk weight should be applied to certain loans to builders to finance the construction of residential properties

which have been presold to qualifying individuals.

Before the banking agencies proceeded with proposals, Congress enacted the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA), Public Law 102–233, 105 Stat. 1761 (December 12, 1991). Section 618(a) of the RTCRRIA requires the banking agencies to amend their regulations and guidelines to provide for a risk weight of 50 percent for any single family residential construction loan that meets certain criteria (presold residential construction loans). The criteria listed in section 618(a) are that:

(1) The loan must be for the construction of a one-to-four family residence;

(2) The institution that is lending to the builder must have sufficient documentation, as may be required by the appropriate banking agency, to demonstrate the intent and ability of the buyer to purchase the residence;

(3) The buyer must provide to the builder a nonrefundable deposit in an amount determined by the appropriate banking agency, but not less than one percent of the principal amount of the buyer's mortgage for the purchase of the residence; and

(4) The loan must satisfy prudent underwriting standards as established by the appropriate banking agency.

The FDIC and the FRB initially concluded that an appropriate method for accomplishing the statutorily-mandated lowering of the risk weight for presold residential construction loans from 100 to 50 percent would be to revise the definition of loans "secured by one-to-four family residential properties" as that term is used for purposes of reporting loans in the Consolidated Reports of Condition and Income (Call Reports) filed quarterly by insured commercial and FDIC-supervised savings banks. At the same time, the Call Report definition of "construction and land development" loans secured by real estate would be revised to exclude presold residential construction loans.

The FDIC and the FRB selected this method because each agency's risk-based capital guidelines state that, for purposes of the 50 percent risk weight category, the types of properties that qualify as one-to-four family residential properties are listed in the Call Report instructions. Consequently, a change in the Call Report instructions that would place certain presold residential construction loans within the types of properties that qualify as one-to-four family residential properties would have the effect of reducing the risk weight applicable to presold residential construction loans from 100 percent to 50 percent for banks supervised by the FDIC and the FRB.

On the other hand, the Call Report definitional change would have had no effect on the risk weight for presold residential construction loans held by national banks and thrifts since neither the OCC's nor the OTS's risk-based capital rules reference the Call Report definition of loans secured by one-to-four family residential properties. As a result, both the OCC and OTS needed to amend their risk-based capital rules to effect the lower risk weight.[1]

Nevertheless, the Federal Financial Institutions Examination Council (FFIEC) agreed to publish a proposal that would enable the FDIC and the FRB to achieve the reduction in the risk weight for presold residential construction loans through a Call Report definitional change. The proposal was published on February 3, 1992 (57 FR 4028), and requested comment on whether the FFIEC should add "loans made in accordance with sound lending principles to builders with substantial project equity for the construction of one-to-four family residences that have been presold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgage loans and have made substantial 'earnest money' deposits" to the list of loans that must be reported for Call Report purposes as loans "secured by one-to-four family residential properties" and exclude these loans from the list of loans made for "construction and land development."

Summary of Comments Received

Comments were received from 41 respondents. The respondents included 31 banking organizations, one thrift institution, two bank trade associations, one thrift trade association, four housing-related trade associations, one government-sponsored entity, and one other party. Overall, 32 commenters, or approximately 78 percent of the respondents, agreed with the proposal by expressing the view that the definitional change and consequent reassignment of these loans to a lower risk weight category is fair and consistent with the riskiness inherent in these types of residential real estate loans.

The nine commenters that opposed the proposed Call Report definitional change did so on the grounds that, in their view, the perceived reporting burden to implement the proposal did not justify the merits of the outcome. One of these commenters stated that it would agree with the proposal if the reporting of presold residential construction loans as loans secured by one-to-four family residential properties in the Call Report were optional.

Another suggestion in the comments was that the provisions of section 618(a) be implemented by amending the risk-based capital guidelines rather than by changing the definition of loans secured by one-to-four family residential properties. One commenter observed that this approach would be more appropriate and much simpler for banking organizations to implement than a regulatory reporting change.

The Call Report proposal requested specific comment on builder equity and purchaser earnest money standards, "including the most appropriate way to define and compute a builder's project equity and the percentages or amounts of builder equity and purchaser earnest money that should be at risk." Eleven comment letters suggested definitions and amounts for "builder equity" and "purchaser earnest money." The amounts suggested for builder's equity ranged from ten percent to 75 percent of the contract price. In addition, a number of commenters offered specific suggestions on what that percentage should be based on, such as cost of land acquisition or hard costs of construction. Suggested amounts for substantial earnest money deposits ranged from one percent to 20 percent.

Final Rule

Based upon the public comments received and discussions with the other banking agencies, the FDIC has determined that it would be preferable to accomplish the lowering of the risk weight for presold residential construction loans by directly amending its risk-based capital guidelines rather than by taking the indirect Call Report definitional route as had originally been proposed. The FDIC is therefore amending its guidelines to state that, for risk-based capital purposes, the types of loans secured by one-to-four family residential properties that are eligible for the 50 percent risk weight category include "loans to builders with substantial project equity for the construction of one-to-four family residences that have been presold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgage loans and have made substantial earnest money deposits."

[1] The OCC and the OTS have adopted the necessary amendments to their risk-based capital rules. The OCC amendment became effective October 5, 1992, while the OTS amendment became effective May 13, 1992.

Then, in order to be assigned a 50 percent risk weight, these residential construction loans, like other loans for one-to-four family residences, must satisfy certain criteria that are specified in the risk-based capital guidelines. These criteria state that such loans must be first liens, must be made in accordance with prudent underwriting standards (including standards relating to the loan amount as a percent of the appraised value of the property), and must not be past due 90 days or more or carried in nonaccrual status. In this regard, the FDIC notes that section 618(a) specifies that the banking agencies may establish prudent underwriting standards that loans to builders for one-to-four family residential property construction must meet in order to be accorded a 50 percent risk weight.

Thus, the amended guidelines further state that such loans to builders will be considered prudently underwritten only if the bank has obtained sufficient documentation that the buyer of the home intends to purchase the home (i.e., has a legally binding written sales contract) and has the ability to obtain a mortgage loan sufficient to purchase the home (i.e., has a firm written commitment for permanent financing of the home upon completion), provided the following criteria are met:

(1) The purchaser is an individual(s) who intends to occupy the residence and is not a partnership, joint venture, trust, corporation, or any other entity (including an entity acting as a sole proprietorship) that is purchasing one or more of the homes for speculative purposes.

(2) The builder must incur at least the first ten percent of the direct costs (i.e., actual costs of the land, labor, and material) before any drawdown is made under the construction loan and the construction loan may not exceed 80 percent of the sales price of the presold home.[2]

(3) The purchaser has made a substantial "earnest money deposit" of no less than three percent of the sales price of the home and the deposit must be subject to forfeiture if the purchaser terminates the sales contract.

(4) The earnest money deposit must be held in escrow by the bank financing the builder or by an independent party in a fiduciary capacity and the escrow agreement must provide that, in the event of default arising from the cancellation of the sales contract by the buyer, the escrow funds must first be used to defray any costs incurred by the bank.

This change to the FDIC's risk-based capital guidelines has the effect of including the 50 percent risk weight category those presold residential construction loans that section 618(a) of the RTCRRIA requires to be included in this category.

This final rule is effective December 31, 1992, in order to place insured state nonmember banks on an equal footing with insured depository institutions supervised by the other banking agencies with respect to the risk weight that can be accorded presold residential construction loans in risk-based capital calculations made as of year-end 1992. In addition, a December 31, 1992, effective date is appropriate because the revision reduces rather than expands regulatory burden.

Regulatory Flexibility Act Analysis

The FDIC certifies that the adoption of this amendment to its risk-based capital guidelines will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required.

The amendment will benefit insured state nonmember banks by reducing the minimum amount of capital that they are required to maintain for presold residential construction loans. The proposal would apply equally to all insured state nonmember banks, regardless of size, and should not disproportionately affect a substantial number of small banks.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and record keeping requirements, State nonmember banks.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends 12 CFR part 325 as follows.

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 is revised to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1919(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2386 (12 U.S.C. 1828 note).

2. In appendix A to subpart A of part 325, the first paragraph of section II.C. category 3 and paragraph (1) of table II. category 3 are revised to read as follows:

Appendix A to subpart A of part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *

C. * * *

Category 3 * * * This category includes loans fully secured by first liens[26] on *one-to-four family residential properties,* provided that such loans have been approved in accordance with prudent underwriting standards, including standards relating to the loan amount as a percent of the appraised value of the property,[27] and provided that the loans are not past due 90 days or more or carried in nonaccrual status.[28] The types of loans that qualify as loans secured by one-to-four family residential properties are listed in the instructions for preparation of the Consolidated Reports of Condition and Income. These properties may be either owner-occupied or rented. In addition, for risk-based capital purposes, loans secured by one-to-four family residential properties include loans to builders with substantial project equity for the construction of one-to-four family residences that have been presold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgage loans and have made substantial earnest money deposits. Such loans to builders will be considered prudently underwritten only if the bank has obtained sufficient documentation that the buyer of the home intends to purchase the home (i.e., has a legally binding written sales contract) and has the ability to obtain a mortgage loan sufficient to purchase the home (i.e., has a firm written commitment for permanent financing of the home upon completion), provided the following criteria are met:

(1) The purchaser is an individual(s) who intends to occupy the residence and is not a partnership, joint venture, trust, corporation, or any other entity (including an entity acting as a sole proprietorship) that is purchasing one or more of the homes for speculative purposes;

[2] Under the FDIC's real estate lending standards regulation and guidelines, as a general matter, institutions may extend loans for the construction of one-to-four family residences with loan-to-value (LTV) ratios of up to 85 percent. These standards and guidelines, which implement section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, become effective on March 19, 1993 (57 FR 62890). While the guidelines permit institutions to make loans for the construction of one-to-four family residences with LTV ratios that exceed 80 percent, such loans would not qualify for the 50 percent risk category. Rather, they should be assigned to the 100 percent risk category.

[26] If a bank holds the first and junior lien(s) on a residential property and no other party holds an intervening lien, the transactions will be treated as a single loan secured by a first lien.

[27] For risk-based capital purposes, the loan-to-value ratio generally is based upon the most current appraised value of the property. The appraisal should be performed in a manner consistent with the Federal banking agencies' real estate appraisal guidelines and with the bank's own appraisal guidelines.

[28] Real estate loans that do not meet all of the specified criteria or that are made for the purpose of property development are placed in the 100 percent risk category.

(2) The builder must incur at least the first ten percent of the direct costs (i.e., actual costs of the land, labor, and material) before any drawdown is made under the construction loan and the construction loan may not exceed 80 percent of the sales price of the presold home;

(3) The purchaser has made a substantial "earnest money deposit" of no less than three percent of the sales price of the home and the deposit must be subject to forfeiture if the purchaser terminates the sales contract; and

(4) The earnest money deposit must be held in escrow by the bank financing the builder or by an independent party in a fiduciary capacity and the escrow agreement must provide that, in the event of default arising from the cancellation of the sales contract by the buyer, the escrow funds must first be used to defray any costs incurred by the bank.

* * * * *

Table II. * * *

Category 3 * * *

(1) Loans fully secured by first liens on one-to-four family residential properties (including certain presold residential construction loans), provided that the loans were approved in accordance with prudent underwriting standards and are not past due 90 days or more or carried in nonaccrual status.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 23rd day of February, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–4711 Filed 3–2–93; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–63; Amendment 39–8483, AD 93–02–01]

Airworthiness Directives; Garrett Engine Division, Allied-Signal Inc., Model TPE331 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Garrett Engine Division, Allied-Signal Incorporated, Model TPE331 series turboprop engines. This action supersedes priority letter AD 92–02–19 that currently requires removal and replacement of certain fuel manifold assemblies. This action also requires the removal and replacement of the manifolds but changes the applicability. This amendment is prompted by reports of cracks in the fuel manifold assemblies that have led to fuel leaks. The actions specified by this AD are intended to prevent fuel spraying on hot turbine components, which can result in an engine fire.

DATES: Effective March 18, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 1993.

Comments for inclusion in the Rules Docket must be received on or before April 2, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–63, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

The service information referenced in this AD may be obtained from Garrett General Aviation Services Division, Distribution Center, 2340 E. University, Phoenix, Arizona 85034. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Propulsion Branch, ANM–140L, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, FAA, 3229 East Spring Street, Long Beach, California 90806–2425; telephone no. (310) 988–5246; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: On January 14, 1992, the FAA issued priority letter AD 92–02–19, applicable to Garrett Engine Division, Allied-Signal Incorporated, Model TPE331 series turboprop engines, which requires removal and replacement of certain fuel manifold assemblies manufactured by Stratoflex between February 1991 and July 1991. Analysis has revealed that fuel hose segments manufactured by Stratoflex during this time period have developed cracks in the internal teflon tube. That action was prompted by three reports of cracks in fuel manifold assemblies which have lead to fuel leaks. That condition, if not corrected, could result in fuel spraying on hot turbine components, which can result in an engine fire.

Since the issuance of that priority letter AD, the FAA has determined that fuel manifold assembles with no identification tags, that are presently affected by the AD, were manufactured prior to the subject time period. Hence, the provision to remove and replace fuel manifold assemblies with no identification tags, has been deleted.

The time period to remove and replace affected fuel manifold assemblies has been changed to 50 hours time in service after the effective date.

The FAA has reviewed and approved the technical contents of Allied-Signal Aerospace Company, Garrett Engine Division, Alert Service Bulletin (SB) No. TPE331–A73–0198, Revision 1, dated January 10, 1992, that describes the removal and replacement of fuel manifold assemblies.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes priority letter AD 92–02–19 to delete the requirement to remove and replace fuel manifold assemblies with no identification tags. The actions are required to be accomplished in accordance with the service bulletin described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ANE–63." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

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

93–02–01 Garrett Engine Division, Allied-Signal Incorporated: Amendment 39–8483. Docket No. 92–ANE–63.

Applicability: Garrett Engine Division, Allied-Signal Incorporated Model TPE331–8, –10, –11, and –12 series turboprop engines installed on but not limited to Cessna Model 441 series (Conquest or Conquest II), Construcciones Aeronauticas, S.A. (CASA) 212 series, Twin Commander 695 series, Mitsubishi MU–2B series (Marquise/Solitaire), Fairchild SA226 and SA227 series (Merlin and Metro), and British Aerospace (BAe) Jetstream 3101 and 3201 series (31 and 32) aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel spraying on hot turbine components, which can result in an engine fire, accomplish the following:

(a) Within the next 50 hours time in service after the effective date of this AD, remove from service in accordance with the Accomplishment Instructions of Garrett Engine Division, Allied-Signal Aerospace Company Alert Service Bulletin (SB) No. TPE331–A73–0198, Revision 1, dated January 10, 1992, Stratoflex fuel manifold assemblies, Part Number 3102469–2, manufactured on the dates listed in the service bulletin, and replace with a serviceable part.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The removal and replacement of the fuel manifold shall be done in accordance with the following service bulletin:

Document No.	Page	Revision	Date
Garrett Engine Division, Allied-Signal Aerospace Company, SB No. TPE331–A73–0198	1, 5–8	Revision 1	Jan. 10, 1992.
	2–4	Original	Dec. 20, 1991.
Total Pages	8.		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Garrett General Aviation Services Division, Distribution Center, 2340 E. University, Phoenix, Arizona 85034. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, Room 311, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment supersedes priority letter AD 92–02–19, issued January 14, 1992.

(f) This amendment becomes effective on March 18, 1993.

Issued in Burlington, Massachusetts, on January 11, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–4825 Filed 3–2–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92–ANE–13; Amendment 39–8344; AD 92–08–51]

Airworthiness Directives; Textron Lycoming Model ALF502R–5 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) Telegraphic AD T92–08–51 that was sent previously to all known U.S.

owners and operators of Textron Lycoming Model ALF502R-5 turbofan engines by individual telegrams. This AD requires replacement of the engine fuel control with an improved fuel control or rework of the engine fuel control to adjust the acceleration and starting schedules and bleed band operating limits. This amendment is prompted by reports of in-flight uncommanded engine power reductions during inclement weather and icing conditions. The actions specified by this AD are intended to prevent in-flight uncommanded engine power reductions of engines during inclement weather and icing conditions.

DATES: Effective March 18, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92-08-51, issued April 8, 1992, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 1993.

Comments for inclusion in the Rules Docket must be received on or before May 3, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ANE-13, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

The applicable service information may be obtained from Textron Lycoming, Stratford Division, 550 Main Street, Stratford, Connecticut 06497. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 12 New England Executive Park, Room 311, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Engine Certification Office, Engine and Propeller Directorate, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803: Telephone (617) 273-7087; Fax (617) 270-2412.

SUPPLEMENTARY INFORMATION: On April 8, 1992, the FAA issued telegraphic AD T92-08-51, applicable to Textron Lycoming ALF502R series turbofan engines, that requires replacement of the engine fuel control with an improved fuel control or rework of the engine fuel control to adjust the acceleration and starting schedules and bleed band operating limits. That action was prompted by four events within the past year of uncommanded inflight engine power reductions of Textron Lycoming ALF502R-5 engines during inclement weather or icing conditions. In the most recent incident, all four engines experienced an uncommanded inflight engine power reduction to a sub-idle condition, which resulted in the inability of the aircraft to maintain altitude until it descended to 10,000 feet where two engines were successfully restarted. In another incident, three of the four engines experienced an uncommanded engine power reduction to a sub-idle condition resulting in a single engine emergency landing. This condition, if not corrected, could result in in-flight uncommanded power reductions of engines during inclement weather and icing conditions.

The FAA has reviewed and approved the technical contents of Textron Lycoming Alert Service Bulletin No. A-ALF 502R 73-12, Revision 1, dated April 7, 1992, that describes replacement of the existing fuel control with an improved fuel control or rework of the existing fuel control by adjusting the acceleration and starting schedules and bleed band operating limits.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued Telegraphic AD T92-08-51 to prevent in-flight uncommanded engine power reductions of engines during inclement weather or icing conditions. The AD requires replacement of the existing engine fuel controls, Part Numbers (P/N) 2-163-810-07, 2-163-810-12, or 2-163-810-15 with an improved fuel control, P/N 2-163-810-20, 2-163-810-21, or 2-163-810-23 or rework of the existing engine fuel controls to the improved configuration by adjusting the acceleration and starting schedules and bleed band operating limits. The reworked engine fuel controls must be reidentified with the applicable new P/N 2-163-810-20, 2-163-810-21, or 2-163-810-23. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on April 8, 1992, to all known U.S. owners and operators of Textron Lycoming ALF502R series turbofan engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-ANE-13." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with

respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

92-08-51 Textron Lycoming: Amendment 39-8344. Docket 92-ANE-13.

Applicability: Textron Lycoming Model ALF502R series turbofan engines installed on British Aerospace BAe-146 airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded in-flight engine power reduction of engines during inclement weather or icing conditions, accomplish the following:

(a) Replace the existing engine fuel control, Part Number (P/N) 2-163-810-07, 2-163-810-12, or 2-163-810-15 with an improved fuel control, P/N 2-163-810-20, 2-163-810-21, or 2-163-810-23, or rework the existing engine fuel control, in accordance with Textron Lycoming Alert Service Bulletin (ASB) No. A-ALF 502R 73-12, Revision 1, dated April 7, 1992, at the first maintenance access of the engine fuel control or within 300 operating cycles after the effective date of this AD, whichever occurs first.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office, FAA, Engine and Propeller Directorate. The request should be forwarded through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement or rework of the engine fuel control shall be done in accordance with the following Textron Lycoming Alert Service Bulletin (ASB):

Document No.	Pages	Version	Date
Textron Lycoming ASB A-ALF-502R 73-12	1, 2, 4, 5	Rev. 1	April 7, 1992.
Total pages: 8	3, 6, 7, 8	Original	April 1, 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Textron Lycoming, Stratford Division, 550 Main Street, Stratford, Connecticut 06497. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20001.

(e) This amendment becomes effective on March 18, 1993, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92-08-51, issued April 8, 1992, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on January 26, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93-4826 Filed 3-2-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 93-CE-18-AD; Amendment 39-8504; AD 93-04-02]

Airworthiness Directives; Rockwell International/Collins Aviation Division TDR-94D Mode S Transponders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Rockwell International/Collins Aviation Division (Collins) TDR-94D Mode S transponders installed on certain aircraft. This action requires fabricating and installing a placard that specifies limiting the operation of this equipment to the traffic advisory mode only, and modifying the software of this equipment, which will eliminate the placard requirement. Tests have shown that these Mode S transponders, when operating in the resolution advisory mode, could lose the capability of coordinating with other aircraft. This could result in either a near-miss situation or a mid-air collision. The actions specified by this AD are intended to prevent collisions or near misses caused by failure of these Mode S transponders.

DATES: Effective March 26, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 26, 1993.

Comments for inclusion in the Rules Docket must be received on or before May 21, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 93-CE-18-AD, room 1558, 01 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Rockwell International/Collins General Aviation Division, 1100 West Hibiscus Boulevard, Melbourne, Florida 32901. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 93-CE-18-AD, room 1558,

601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. A.E. Clark, Manager, Systems and Equipment Branch, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3020; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION: The Traffic Alert and Collision Avoidance System (TCAS) is a system that was developed by the FAA and the aviation industry as a way of reducing the risks of mid-air collisions between aircraft equipped with the system. In particular, TCAS II provides traffic advisories (TA) and resolution advisories (RA). A TA depicts the position of the traffic relative to the TCAS equipped aircraft, which assists the pilot in visually acquiring intruding aircraft. An RA indicates the vertical rate that must be achieved or the recommended escape maneuver needed to maintain safe separation from threatening aircraft.

The Mode S transponder works with the TCAS computer where control information is relayed to the pilot through this transponder. Recent compatibility testing between two aircraft equipped with different TCAS II systems indicated a problem with the Collins TDR–94D Mode S transponders, part number (P/N) CPN 622–9210–002. Under the present configuration, this Mode S transponder could lose the capability of coordinating RA's between more than one aircraft. This loss of coordination could result in more than one aircraft selecting the same climb or dive RA, possibly resulting in a near-miss situation or mid-air collision.

The FAA has determined that the affected Mode S transponders could be installed on, but not limited to, the following:

Aerospatiale ATR–42 and ATR–72 series airplanes
Saab 340A and 340B airplanes
Short Model SD3–60 airplanes
de Havilland DHC–7 and DHC–8 series airplanes
British Aerospace ATP airplanes
Gulfstream G–II, G–III, and G–IV series airplanes
Dassault Mystere-Falcon 50, Mystere-Falcon 200, and Mystere Falcon 900 airplanes
Canadair Challenger CL–601 airplanes
British Aerospace HS 125–700A airplanes
Beechcraft 300 series airplanes

Collins has issued Service Bulletin (SB) TDR–94/94D–34–6, Revision 2, dated September 21, 1992, which specifies procedures for modifying the software of these Collins TDR–94D Mode S transponders, P/N CPN 622–9210–002.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that (1) Aircraft equipped with these Mode S transponders should not operate in the RA mode until the software is modified; and (2) AD action should be taken in order to prevent a mid-air collision or a near-miss situation caused by failure of these Mode S transponders.

Since an unsafe condition has been identified that is likely to exist or develop in other Collins TDR–94D Mode S transponders, P/N CPN 622–9210–002, of the same type design, this AD requires fabricating and installing a placard that limits the operation of this equipment in the traffic advisory (TA) mode only, and eventually modifying the software of this equipment, which will eliminate the placard requirement. The actions are to be accomplished in accordance with the instructions in Collins SB TDR–94/94D–34–6, Revision 2, dated September 21, 1992.

The condition specified by the required AD is not caused by actual hours time-in-service (TIS) of the aircraft that the equipment is installed in. There is no correlation between improper operation of the equipment and the age or number of times the equipment is utilized. Based on this, the compliance time of the required AD is presented in calendar time instead of hour TIS.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–18–AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39

of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

93-04-02 Rockwell International/Collins Aviation

Division: Amendment 39-8504; Docket No. 93-CE-18-AD.

Applicability: TDR-94D Mode S transponders, P/N CPN 622-9210-002, installed on, but not limited to the following, certificated in any category:

Aerospatiale ATR-42 and ATR-72 series airplanes
Saab 340A and 340B airplanes
Short Model SD3-60 airplanes
de Havilland DHC-7 and DHC-8 series airplanes
British Aerospace ATP airplanes
Gulfstream G-II, G-III, and G-IV series airplanes
Dassault Mystere-Falcon 50, Mystere-Falcon 200, and Mystere-Falcon 900 airplanes
Canadair Challenger CL-601 airplanes
British Aerospace HS 125-700A airplanes
Beechcraft 300 series airplanes.

Compliance: Required as indicated, unless already accomplished.

To prevent a mid-air collision or a near-miss situation caused by failure of these Mode S transponders, accomplish the following:

(a) Within the next 10 calendar days after the effective date of this AD, fabricate a placard with the following words in letters at least 0.10-inch in height and install this placard within the pilot's clear view on the instrument panel: "OPERATION OF TCAS II IN ANY MODE OTHER THAN THE "TA ONLY" MODE IS PROHIBITED."

(b) Within the next 6 calendar months after the effective date of this AD, modify the software of the Mode S transponders in accordance with the Accomplishment Instructions section of Collins Service Bulletin TDR-94/94D-34-6, Revision 2, dated September 21, 1992. The placard required by paragraph (a) of this AD is no longer required after this modification is incorporated.

(c) If parts for the above modification are not available, the airplane operator may comply with the placard requirement of paragraph (a) of this AD until the modification is incorporated based upon a schedule established by the manufacturer through the Atlanta Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(f) The modification required by this AD shall be done in accordance with Collins Service Bulletin TDR-94/94D-34-6, Revision 2, dated September 21, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Rockwell International/Collins General Aviation Division, 1100 West Hibiscus Boulevard, Melbourne, Florida 32901. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(g) This amendment (39-8504) becomes effective on March 26, 1993.

Issued in Kansas City MIssiouri, on February 23, 2993.

John E. Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-4824 Filed 3-2-93; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 71

[Airspace Docket No. 90-AWA-11]

Establishment of the Bangor International Airport Airport Radar Service Area; ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published on February 9, 1993 (58 FR 7738). This final rule established an Airport Radar Service Area (ARSA) at Bangor International Airport, Bangor, ME. The final rule contained erroneous information concerning the availability of the ARSA service. The description of the Bangor ARSA is corrected to remove the reference to specific days and hours of operation applicable to the Bangor Tower and Approach Control. Service in the ARSA will be available continuously.

EFFECTIVE DATE: 0901 U.T.C., April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION: On February 9, 1993, the FAA published a final rule that established an ARSA at the Bangor International Airport (58 FR 7738). The final rule contained erroneous information concerning the availability of the ARSA service. Reference to the specific days and hours of operation applicable to the Bangor Tower and Approach Control was published in error because the ARSA service will be available continuously. This action corrects the description of the Bangor ARSA by removing any language referring to these days an hours of operation.

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication in the **Federal Register** on February 9, 1993 (58 FR 7738; **Federal Register** Document 93-2927) and the corresponding description in FAA Order 7400.7A, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Corrected]

On page 7744 in the second column, the description for the Bangor, ME, ARSA is corrected to read as follows:

ANE ME ARS Bangor, ME
Bangor International Airport
(lat. 44°48'27"N., long. 68°49'41"W.)
Bangor VORTAC
((lat. 44°50'31"N., long. 68°52'26"W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of Bangor International Airport; and that airspace extending upward from 2,000 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the airport from the 111° radial of the Bangor VORTAC clockwise to the 232° radial of the VORTAC; and that airspace extending upward from 1,500 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the airport from the 232° radial of the VORTAC clockwise to the 111° radial of the VORTAC.

Issued to Washington, DC, on February 23, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-4875 Filed 3-2-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 121

[Docket No. 26142; Amdt. No. 121-230]

RIN 2120-AB45

Miscellaneous Operational Amendments; Flight and Navigational Equipment; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendments.

SUMMARY: On September 15, 1992, the Federal Aviation Administration (FAA) issued a final rule amending the Federal Aviation Regulations governing, among other things, flight and navigational equipment (57 FR 42662; September 15, 1992). This action corrects an error concerning the intent of the effective date for large turbojet powered airplanes and large turboprop powered airplanes.

EFFECTIVE DATE: April 2, 1993.

FOR FURTHER INFORMATION CONTACT: Larry Youngblut, Regulations Branch (AFS-240), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; Telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 1992, the FAA issued a final rule amending the Federal Aviation Regulations governing, among other things, flight and navigational equipment (57 FR 42662; September 15, 1992). As amended, § 121.305 reads, in pertinent part, "After October 17, 1994 on large airplanes other than reciprocating-engine-powered airplanes, in addition to two gyroscopic bank-and-pitch indicators (artificial horizons) for use at the pilot stations, a third such instrument * * *." The FAA did not propose and at no time intended to change the effective date of all of § 121.305(j). The agency's proposal and intent was to extend the applicability of § 121.305(j) to all large turboprop airplanes, with a 2-year compliance date for such large turboprop airplanes.

This action corrects the error by amending the phrase "After October 17, 1994 on large airplanes other than reciprocating-engine-powered airplanes" to read, "On large turbojet powered airplanes, and after October 17, 1994, on large turboprop powered airplanes,".

List of Subjects in 14 CFR Part 121

Air carriers, Air transportation, Aviation safety, Common carriers, Safety, Transportation.

Accordingly, 14 CFR part 121 is corrected by making the following correcting amendments:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS, AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

§ 121.305 [Corrected]

2. Section 121.305 is amended by revising the introductory text of paragraph (j) to read as follows:

§ 121.305 Flight and navigational equipment.

* * * * *

(j) On large turbojet powered airplanes, and after October 17, 1994, on large turboprop powered airplanes, in addition to two gyroscopic bank-and-pitch indicators (artificial horizons) for use at the pilot stations, a third such instrument that—

* * * * *

Issued in Washington, DC, on February 25, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 93-4874 Filed 3-2-93; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: This rule makes final the first major revision of the present procedural rules of the Federal Mine Safety and Health Review Commission (Commission). The ultimate goal of the Commission's procedural rules remains the just, speedy and inexpensive determination of all proceedings before the Commission. These final rules are intended to carry forward the present rules' tradition of simple, easily understood, and efficient procedure in an administrative setting.

EFFECTIVE DATE: These revised rules will take effect on May 3, 1993.

The final rules will apply to cases initiated after the rules take effect. The final rules also will apply to further proceedings in cases then pending, except to the extent that such application would be infeasible or unfair, in which event the present procedural rules would apply. The Commission will receive any further comment on these rules during the 60-day period before they take effect. The Commission welcomes comment on its procedural rules, which are always open to comment and suggestions.

ADDRESSES: Comments and questions may be sent to the Office of General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, N.W., Ste. 630, Washington, D.C. 20006-3867.

FOR TELEPHONE INQUIRIES CALL: L. Joseph Ferrara (General Counsel), 202-653-5610 (202-708-9300 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Discussion of Procedural Rules

A. Background

The Commission is an independent adjudicative agency that provides administrative trial and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988)(Mine Act). The Commission is not a part of, and is independent from, the Department of Labor and that Department's Mine Safety and Health Administration (MSHA). The Commission's procedural rules govern practice and procedure in proceedings at both the trial and review levels.

The Commission adopted its present procedural rules on June 29, 1979 (44 FR 38226). Only a few rules have been revised since that time. In 1989, the Commission determined that a general reexamination of its rules was appropriate to take account of ten years of experience with their operation. In developing proposed revisions, the Commission considered its own experience with the rules and also the views of its administrative law judges, who preside at the Commission's trial proceedings. The Commission considered possible revisions in a series of public meetings and in 1990 published proposed revisions in the **Federal Register** (55 FR 4853). In its discussion of the proposals, the Commission explained that it was adapting its rules to present needs in light of experience and changing practical and legal circumstances. (55 FR 4853).

The proposed rules clarified some procedures, modified the treatment of other procedural subjects in light of case law developments under the Mine Act,

and addressed a number of procedural topics not covered in the original rules. For example, the procedures for contesting citations and orders pursuant to section 105(d) were set forth in greater detail. See proposed § 2700.20 (55 FR 4859); compare present 29 CFR 2700.20. Procedures for pretrial discovery also were set forth in greater detail. See proposed §§ 2700.56–2700.59 (55 FR 4862); compare present 29 CFR 2700.55–2700.58. The Commission proposed adopting new procedures dealing with intervention and amicus curiae participation at both the trial and review levels. See proposed §§ 2700.4 (b) and (c), 2700.73, and 2700.74 (55 FR 4858, 4864); compare present 29 CFR 2700.4. The Commission also clarified its procedures in such areas as interlocutory review, disciplinary referral, and ex parte communications. See proposed §§ 2700.76, 2700.80, and 2700.82 (55 FR 4865–66); compare present 29 CFR 2700.74, 2700.80, and 2700.82.

Although notice and comment rulemaking, as required under the Administrative Procedure Act, does not apply to rules of agency procedure such as these rules (see 5 U.S.C. 553(b)(3)(A)), the Commission has traditionally encouraged public participation in its rulemaking process. The Commission invited the comment and suggestions of the mining community, the Commission bar, and all other interested persons (55 FR 4854). A number of organizations and individuals filed comments, including the American Mining Congress and the National Coal Association (joint filing), the Appalachian Research & Defense Fund of Kentucky, the Office of the Solicitor of the Department of Labor, several law firms engaged in practice before the Commission, and the United Mine Workers of America.

Almost all the Commission's proposed rules received some comment, in particular: (1) The proposed deletion from the present rules (29 CFR 2700.2) of the definition of the term "representative of miners" (proposed § 2700.2 (55 FR 4858)); (2) intervention and amicus curiae participation (proposed §§ 2700.4 (b) and (c), 2700.73, and 2700.74 (55 FR 4858, 4864)); (3) the manner and date of filing pleadings and other documents (proposed § 2700.5(d) (55 FR 4858)); (4) the proposed deletion of requirements in the present rules (29 CFR 2700.7(c), 2700.26, and 2700.27) that certain documents generated in Mine Act litigation be posted on mine bulletin boards (proposed §§ 2700.7, 2700.26, and 2700.28 (55 FR 4859, 4860)); (5) the proposed deletion from the present rules (29 CFR 2700.8(b)) of the 5-day "grace" period for filing documents in response to those served by mail (proposed § 2700.8 (55 FR 4859)); (6) the treatment of contests of citations and orders pursuant to section 105(d) of the Mine Act (proposed § 2700.20 (55 FR 4859)); (7) hearing sites (proposed § 2700.51 (55 FR 4861–4862)); (8) the timing for initiation and completion of discovery (proposed §§ 2700.56 (c) and (d) (55 FR 4862)); (9) the proposed deletion from the present rules (29 CFR 2700.59) of the provision that names of miner witnesses not be disclosed until 2 days prior to a hearing (proposed § 2700.61 (55 FR 4863)); and (10) the treatment of ex parte communications (proposed § 2700.82 (55 FR 4866)).

While most commenters expressed degrees of agreement with various aspects of the proposed rules, there also were objections. Some commenters opposed the proposed deletions from the present rules of the definition of the term "representative of miners"; of the references to posting requirements; of the 5-day grace period for filing documents in response to those served by mail; and of the limitation on the disclosure of the names of miner witnesses until 2 days prior to a hearing. Disagreement was expressed with the proposal to make filing by mail complete upon receipt by the Commission. The Commission was urged to permit filing and service by facsimile transmission (FAX). Objections were raised to the proposed time periods for pre-trial discovery. In addition, some commenters suggested new rules.

While action on the proposed rules was pending, the Commission resolved by case adjudication a number of procedural issues raised in the comments. These issues are discussed in the section-by-section analysis. In public meetings held in late 1992, the Commission considered the comments and deliberated on the rules. The Commission again sought and received suggestions from its administrative law judges concerning a number of trial-related rules.

The final rules retain many provisions of both the present and proposed rules. In significant changes from the proposed rules, the Commission has restored a reference to the Mine Act's posting requirement (§ 2700.7(b)), and has retained the present requirement (29 CFR 2700.59) that the names of miner witnesses not be disclosed until 2 days prior to trial (§ 2700.62). In general, filing by mailing is effective upon mailing (§ 2700.5(d)). The Commission also has decided to retain the present 5-day grace period (29 CFR § 2700.8(b)) for filing documents in response to those served by mail (§ 2700.8).

In response to comments and upon further reflection, the Commission has provided for FAX filing of motions for expedition of proceedings (§ 2700.52(a)) and of petitions for discretionary review (§ 2700.70(a)). FAX filing may also be permitted for other documents (§ 2700.5(d)). The Commission has further clarified its general filing and service rules. The rules provide throughout that, whenever legible copies of underlying citations and orders are not attached to pleadings, as required, the pleadings shall set forth their text. Subpoenas may now also be served by registered or certified mail, return receipt requested (§ 2700.60). The final rules further clarify the proposed rules on intervention and amicus curiae participation (§§ 2700.4(b) and (c), 2700.73, and 2700.74), discovery (§§ 2700.56–2700.59), recusal and disqualification (§ 2700.81), and ex parte communications (§ 2700.82).

The Commission also has made editorial changes in the final rules. Rules that are based on the text of the Mine Act follow the statute. Certain rules have been changed to accord with related changes in others.

The Commission thanks all those who commented on the proposed rules for their contribution.

B. Section-by-Section Analysis

Set forth below is an analysis of the more significant comments received on the Commission's proposed rules and the final actions taken. Minor changes or modifications to present or proposed rules are not discussed. All comments were carefully considered. Readers are advised to consult the text of the final rules and not to rely exclusively on this summary of changes.

Subpart A—General Provisions

§ 2700.1 Scope; applicability of other rules; construction.

Paragraph (b) retains the proposed language that the Commission also be guided, so far as practicable, by the Federal Rules of Appellate Procedure when considering procedural questions not covered by the Mine Act, the Commission's procedural rules, or the Administrative Procedure Act. One commenter suggested that this section should also incorporate the Federal Rules of Evidence. The Commission declines to incorporate expressly into its simple administrative procedure the more complex Federal Rules of Evidence. *See Mid-Continent Resources, Inc.*, 6 FMSHRC 1132, 1136 n.6 (May 1984).

§ 2700.2 Definitions.

The proposed rule deleted the definition of "representative of miners" from the present rules. That term is not defined in the Mine Act. The present procedural rule (29 CFR 2700.2) merely repeats the definition promulgated by the Secretary of Labor (Secretary) at 30 CFR 40.1(b). Some commenters objected to the proposed deletion. The Commission is aware of the importance of the role of miners' representatives under the Mine Act but deems it inappropriate to incorporate in its procedural rules the Secretary's definition. The definition of miners' representative and its application in various circumstances have been at issue in litigation under the Mine Act, and the Commission reserves resolution of such questions to its adjudicative process. This procedural determination is not intended to signal any view as to the reasonableness of the Secretary's definition or its application.

§ 2700.3 Who may practice.

The Commission adopts the proposed rule with minor changes. In the Commission's judgment, a number of the matters raised by commenters, such as the addition of a requirement that representation of a party by an owner, officer, or employee be specifically authorized, are best resolved in adjudication.

§ 2700.4 Parties, intervenors, and amici curiae.

The proposed rule added new procedures dealing with intervention and amicus curiae participation at the trial level. The Commission received a number of comments on these proposals and has modified the proposals. Paragraph (b)(2) provides that motions to intervene made by persons other than affected miners or their representatives shall be filed before the start of a hearing on the merits, unless the judge, for good cause shown, permits later filing.

Some commenters suggested that the proposed criteria for intervention were too restrictive, and urged the Commission to permit intervention on the basis of an interest in the issues involved in a proceeding. The Commission has determined that interest in issues is too broad a criterion for intervention. Such a standard could serve to deprive the parties of control over the litigation and could encumber the Commission's simple administrative trial process. See Mid-Continent Resources, Inc., 11 FMSHRC 2399 (December 1989)(discussing criteria for non-party standing to appeal a Commission judge's decision to the Commission). In denying a motion to intervene, however, a Commission judge may alternatively permit the movant to participate in the proceeding as amicus curiae (§ 2700.4(c)).

In response to comments, the Commission has deleted from paragraph (c) a time limit for making a motion for amicus curiae participation. Amicus participation may be helpful at any stage of a proceeding, and Commission judges will exercise their sound discretion in considering the timeliness of such motions.

§ 2700.5 General requirements for pleadings and other documents; status or informational requests.

The Commission received extensive comments on the proposed manner and date of filing. The proposed rule changed the date on which certain mailed pleadings are deemed filed, from the date of mailing to the date of receipt by the Commission. A number of commenters explained the practical problems caused by a system based upon receipt. After further considering the proposed rule, the Commission has decided to revise its procedure for filing by mail and agrees that certain filings should be effective upon mailing.

Under present procedure (29 CFR 2700.5(d)), filing may be accomplished by personal delivery or by mail and is effective upon receipt or upon mailing by certified or registered mail, return receipt requested. Consistent with present procedure, paragraph (d), in general, permits filing either by personal delivery or by mail. FAX filing is also allowed in certain instances. Paragraph (d) now requires that initial pleadings filed by mail must be sent by certified or registered mail, return receipt requested. Such a requirement will provide documentation of initial pleadings. This requirement applies to the mailing of a contest of a citation or order, a petition for assessment of penalty, a complaint for compensation, a discrimination complaint, an application for temporary reinstatement, and an application for temporary relief. Contests of orders include contests of orders issued under either section 104 or section 107 of the Mine Act. In order to simplify mail filing after initiation of pleadings, paragraph (d) further provides that all subsequent documents, such as responsive pleadings and briefs, may be filed with a judge or the Commission by first class mail. This procedure for filing by mail generally parallels the service by mail procedure set forth in § 2700.7(c).

Paragraph (d) also clarifies that filing by personal delivery includes courier service and that filing by first class mail includes express mail. Filing by personal delivery is effective upon receipt; filing by mail is effective upon mailing, except for the filing of a petition for discretionary review (see § 2700.70(a)), which is effective upon receipt.

In response to a number of comments, the Commission has included in paragraph (d) a provision that motions for expedition (§ 2700.52(a)) and petitions for discretionary review (§ 2700.70(a)) may be filed by FAX. Paragraph (d) also provides that FAX filing may be permitted for other documents and that filing by FAX is effective upon receipt. When filing by FAX, the filer is required under paragraph (e) to provide, in addition, the appropriate number of non-facsimile copies within three days of the facsimile transmission.

Paragraph (g) provides that inquiries concerning filing requirements, case status, or docket information shall be directed to the Commission's Office of General Counsel or its Docket Office.

§ 2700.7 Service.

A number of commenters objected to the proposed rules' deletion of a reference to the Mine Act's posting requirements. Section 109 of the Mine Act requires that mines maintain bulletin boards, on which certain documents arising in Mine Act litigation are to be posted. This is a substantive requirement that the Commission believes is subject under the Mine Act to the Secretary's rulemaking and enforcement authority. The Commission's present rule (29 CFR 2700.7(c)) requires the posting of some documents not referenced in the Mine Act. The Commission deems it inappropriate for it to establish any posting requirements beyond those set forth in the Mine Act, and, therefore, has limited paragraph (b) to a general reference to the statutory posting requirements.

Paragraph (c) sets forth methods of service, which correspond to methods of filing in § 2700.5(d). Paragraph (c) permits service by personal delivery or by mail. Service of the initial pleadings must be by certified or registered mail, return receipt requested. All subsequent papers served by mail may be sent by first class mail. Consistent with filing procedure (§ 2700.5(d)), paragraph (c) clarifies that service by personal delivery includes courier service and service by first class mail includes express mail. Service by personal delivery is effective upon receipt; service by mail is effective upon mailing. When filing a document by

FAX, the filing party also must serve by FAX or by a means as expeditious as FAX. Service by FAX is effective upon receipt.

§ 2700.8 Computation of time.

The proposed rule deleted the 5-day grace period presently allowed for filing a document in response to one served by mail (29 CFR 2700.8(b)). Many commenters opposed the deletion of this allowance. The Commission, upon further consideration, reinstates the 5-day grace period, but emphasizes that it applies only to the filing of responsive pleadings.

§ 2700.10 Motions.

The proposed rule changed the time allowed for response to a written motion from 10 to 15 days, to compensate for the deletion of the present rule's 5-day grace period. In view of the reinstatement in § 2700.8 of the 5-day grace period, the time allowed for response is again set at 10 days, unchanged from the present rule.

§ 2700.11 Withdrawal of pleading.

The Secretary suggested that he and an affected mine operator be permitted to withdraw a petition for assessment of civil penalty and notice of contest of proposed penalty, respectively, upon notification to the Commission judge or the Commission that the penalty in issue has been paid in full. The Commission declines to adopt this suggestion. Section 110(k) of the Mine Act provides that no proposed penalty that has been contested before the Commission be compromised, mitigated, or settled without the Commission's approval.

§ 2700.12 Consolidation of proceedings.

The present rule states that the Commission and its judges may order consolidation of proceedings in certain appropriate circumstances. In a technical change, the final rule now clarifies that such consolidation may be ordered by the Commission and its judges upon the basis of their own, or a party's, motion.

Subpart B—Contests of Citations and Orders

§ 2700.20 Notice of contest of a citation or order issued under section 104 of the Act.

The proposed rule attempted to clarify the various forms of contest that may be filed pursuant to section 105(d) of the Mine Act with respect to citations and orders issued under section 104. A number of comments revealed that some confusion still exists in this area. In order to achieve greater clarity, paragraph (a), tracking section 105(d), expressly distinguishes the contests that may be filed by an operator from those that may be filed by a miner or representative of miners.

In response to a comment from the Secretary, paragraph (b) more specifically sets forth where such notices of contest are to be filed with the Secretary. In paragraphs (c) and (d), the Commission retains the requirements that the Secretary and the contesting party shall, respectively, advise the Commission of, and file with the Commission, such notices of contest. Section 105(d) requires the Secretary to advise the Commission of such contests. In response to another comment, paragraph (e) provides that whenever a legible copy of the contested citation or order is not attached, the notice of contest shall set forth the text of the citation or order.

The Secretary requested that he be given 30 rather than 15 days to file answers to notices of contest. Paragraph (b) allows the Secretary 20 days to file such answers.

§ 2700.22 Notice of contest of imminent danger withdrawal orders under section 107 of the Act.

One commenter suggested adding language to address Commission review of orders issued under sections 103(j), 103(k), and 104(g) of the Mine Act. Section 105(d) of the Mine Act and § 2700.20 already provide for contest of any order issued under section 104, but the Mine Act does not expressly provide for contest of section 103 orders.

As in § 2700.20, paragraph (b) provides that whenever a legible copy of the contested imminent danger order is not attached, the notice of contest shall set forth its text.

Subpart C—Contests of Proposed Penalties

§ 2700.25 Proposed penalty assessment.

One commenter noted that neither the present nor the proposed rule sets forth a time limit within which the Secretary is to notify the operator of a proposed penalty assessment, and suggested that the Commission prescribe such a time limit. Section 105(a) of the Mine Act states that the Secretary shall provide such notice "within a reasonable time." Disputes over the meaning of that phrase will be resolved in the adjudicative process.

§ 2700.26 Notice of contest of proposed penalty assessment.

The proposed rule deleted the present rule's reference to the posting of notices of contest of proposed penalty assessments. The Mine Act's posting requirements are referenced generally in § 2700.7(b) and the proposed deletion is adopted.

§ 2700.28 Filing of petition for assessment of penalty with the Commission.

For the reason set forth with respect to § 2700.26, § 2700.28 deletes, as was proposed, a requirement that the petition for assessment of penalty be posted. One commenter suggested that the rule should prohibit the Secretary from basing a penalty petition upon a policy not promulgated pursuant to notice and comment rulemaking procedures. Such substantive legal issues are best resolved in the adjudicative process. See, e.g., Drummond Co., 14 FMSHRC 661 (May 1992). This rule also sets forth the requirement that whenever legible copies of the underlying citation or order are not attached, the petition shall set forth the text of the citation or order.

§ 2700.29 Answer.

The Secretary suggests that the proposed rule be amended to require an operator to state whether it admits or denies each allegation in the petition. This proposal would complicate the Commission's simple "notice" pleading and is not adopted.

Subpart D—Complaints for Compensation

§ 2700.36 Contents of complaint.

One commenter suggested that the Commission require that a complaint for compensation set forth the names of all miners on whose behalf the complaint is filed. All miners entitled to compensation, however, may not be known at the time of filing. The miners will be identified during the course of litigation. Accordingly, the final rule does not add such a requirement. The rule provides that, whenever a legible copy of the pertinent withdrawal order is not attached, the text of the order shall be set forth in the complaint.

Subpart E—Complaints of Discharge, Discrimination or Interference

§ 2700.40 Who may file.

One commenter suggested that the Commission reinstate a previous version of this rule, which allowed a miner to file a discrimination complaint with the Commission, pursuant to section 105(c)(3) of the Mine Act, if the Secretary failed to make a determination, within the 90-day period prescribed in the statute, as to whether discrimination occurred. The

Commission rejects that suggestion. In conformity with its decision in *Gilbert v. Sandy Fork Mining Co.*, 9 FMSHRC 1327 (August 1987), rev'd on other grounds, 866 F.2d 1433 (D.C. Cir. 1989), the Commission had amended the rule to prohibit such filings. 52 FR 44882, November 23, 1987. Paragraph (b) includes the proposed provision that a miner's independent discrimination complaint may not be filed with the Commission until after a determination by the Secretary that no discrimination has occurred.

§ 2700.44 Petition for assessment of penalty in discrimination cases.

Proposed § 2700.44(b) provided that a judge who sustains a miner's independent discrimination complaint shall notify the Secretary of his decision, and required the Secretary to file a petition for assessment of penalty with the Commission within 45 days. The Secretary commented that requiring him to file a penalty petition in such circumstances would be inefficient, and recommended that the Commission itself assess the penalty.

The Commission has determined that it is best to follow the Mine Act's normal progression of penalty proposal by the Secretary and penalty assessment by the Commission. Accordingly, the proposed rule is adopted. The Commission will continue to review this process.

§ 2700.45 Temporary reinstatement proceedings.

The Commission adopts § 2700.45 as proposed with minor modifications. The Commission advises practitioners that, given the extraordinary remedy involved, the rule requires special methods of filing and service. The rule contemplates expeditious proceedings at all stages, and its time limits are to be strictly observed.

Paragraph (a) clarifies that service by personal delivery includes courier service. Paragraph (e) clarifies that the judge's order upon an application for temporary reinstatement must be in writing.

One commenter disagreed with the proposed elimination in § 2700.45(g) of a provision that allowed a judge to dissolve an order of temporary reinstatement if the Secretary fails to file a discrimination complaint with the Commission within 90 days. As explained in the discussion of that proposal (55 FR 4855), the dissolution provision was omitted in order to conform temporary reinstatement procedure to the Commission's decision in Gilbert, *supra*. In conformity with Gilbert, the Commission retains the proposed rule.

Subpart F—Applications for Temporary Relief

§ 2700.46 Procedure.

In response to comments, paragraph (b) reduces the time for opposing applications for temporary relief, and provides that such opposition is to be filed within 4 days of receipt of an application.

Subpart G—Hearings

§ 2700.51 Hearing sites.

Some comments related problems with inconvenient hearing sites under the present rule and suggested that hearing sites be closer to the mine. Selecting an appropriate site involves balancing the convenience of the parties with scheduling and cost constraints of the Commission. The Commission's judges endeavor to exercise sound and fair discretion in selecting hearing sites. Should a significant problem arise, an aggrieved party may petition the Commission for interlocutory review of the judge's hearing site order.

§ 2700.52 Expedition of proceedings.

In response to comments, paragraph (a) permits FAX filing of motions for expedition of proceedings.

The Secretary expressed concern that the Commission would grant such motions automatically. In Wyoming Fuel Co., 14 FMSHRC 1282 (August 1992), the Commission examined the Mine Act's provisions in section 107(e) for expedition of proceedings involving challenges to imminent danger orders. The Commission concluded that, notwithstanding the statutory requirements for expedition in imminent danger cases, Commission judges retain discretion in scheduling such hearings to consider relevant factors in each case. 14 FMSHRC at 1287. Commission judges will exercise informed discretion in considering all motions for expedition.

Another commenter suggested that the rule include a provision for making emergency motions after office hours or in unusual circumstances. The Commission believes that emergency situations can be accommodated under its procedures.

§ 2700.55 Powers of Judges.

Both the present and proposed rules stated that among a judge's powers is the authority to "take depositions" (29 CFR 2700.54(a)(4); proposed § 2700.55(a)(4)). That provision was incorporated from section 556(c) of the Administrative Procedure Act.

The Secretary suggested deletion of this provision. Rarely, if ever, has a Commission judge taken a party's deposition. Section 556(c) of the Administrative Procedure Act does not grant an agency or its judges additional powers beyond those conferred upon them by their organic statute. Section 113(e) of the Mine Act empowers the Commission and its judges to compel testimony and to "order testimony to be taken by deposition." The Commission does not regard this language as authorizing its judges themselves to depose witnesses. Accordingly, paragraph (d) deletes that provision and, instead, refers only to a judge's power to order the taking of depositions.

§ 2700.56 Discovery; general.

Numerous comments were received concerning the appropriate time period for the conduct of discovery. The Commission has reexamined the matter.

The proposed rule provided that discovery was to be initiated within 30 days after the filing of certain enumerated responsive pleadings (proposed § 2700.56(c)) and completed within 60 days of initiation (proposed § 2700.56(d)).

Some commenters suggested expanding this time period. Commission judges have reported that discovery is normally completed in a relatively brief period of time. They have expressed concern that expanding the time for discovery could result in serious delay of hearings.

Upon further consideration, the Commission has revised the period available for pre-trial discovery. Under paragraph (d), discovery is to be initiated within 20 days after the filing of the relevant responsive pleading and, under paragraph (e), is to be completed within 40 days of initiation. These periods are adequate for most discovery purposes and will not generally delay Commission hearings. Pre-trial discovery under the Commission's administrative procedure contrasts with the relatively more complex and time-consuming discovery process under general federal civil practice. The Commission emphasizes that paragraphs (d) and (e) expressly permit the judge, for good cause shown, to extend the times for initiation and completion of discovery. The Commission will determine whether the time periods work as intended.

The Secretary suggested that proposed § 2700.56(e), dealing with limitation of discovery, should include provision for in camera review of documents sought for which the Secretary has raised a claim of privilege. The Commission has addressed in camera review and

discovery privileges in its decisions. See, e.g., Asarco, Inc., 12 FMSHRC 2548 (December 1990). The Commission believes that such matters are best resolved on a case-by-case basis.

§ 2700.59 Failure to cooperate in discovery; sanctions.

In response to comments, § 2700.59 includes among the sanctions for failure to cooperate in discovery, the dismissal of a proceeding in favor of the party seeking discovery. Some commenters suggested that the rule should also allow monetary sanctions for discovery abuse. In *Francis A. Marin* v. *Asarco, Inc.*, 14 FMSHRC 1269 (August 1992), the Commission held that, in general, it is not authorized by the Mine Act to make monetary awards to litigants. In any event, the Commission's experience does not suggest a need for monetary sanctions for discovery abuse.

§ 2700.60 Subpoenas.

In response to the Secretary's suggestions, paragraph (a) permits both oral and written application for subpoenas. Paragraph (a) has been further revised to provide that, in addition to personal delivery, a subpoena may be served by registered or certified mail, return receipt requested. In such case, any risk of delivery is on the sender.

§ 2700.61 Name of miner informant.

Considerable comment was generated by the proposed deletion of the requirement in 29 CFR 2700.59 that the names of miner witnesses not be disclosed until 2 days before a hearing. The Commission has reexamined this matter.

A number of comments reflected confusion between miner informants and miner witnesses. These topics are now addressed in separate rules, §§ 2700.61 and 2700.62. Rule 2700.61 addresses only the subject of miner informants, and provides that, except in extraordinary circumstances, a judge shall not disclose, or order disclosure of, the names of miner informants. A miner informant may also be a witness in Commission proceedings.

§ 2700.62 Name of miner witness.

Section 2700.62 addresses only the subject of miner witnesses. After reconsidering the issue, the Commission has decided to continue the 2-day disclosure rule. The Commission recognizes the importance of protecting miner witnesses from possible intimidation or retaliation and of safeguarding the integrity of its trial proceedings. This rule is not intended to suggest that operators would engage in improper conduct with regard to miner witnesses, but to guard against any possibility of such abuse. Consistent with § 2700.61, in disclosing the names of miner witnesses, a judge shall not disclose whether any were also informants.

§ 2700.63 Evidence; presentation of case.

Some commenters suggested that the proposed rule be amended to provide restrictive criteria for the admission and weighing of hearsay evidence. The Commission has held that hearsay evidence is admissible in its proceedings, and has set forth the appropriate criteria for weighing such evidence. *See, e.g., Mid-Continent, supra*, 6 FMSHRC at 1135–39.

Subpart H—Review by the Commission

§ 2700.70 Petitions for discretionary review.

In response to comments, paragraph (a) permits FAX filing of petitions for discretionary review.

§ 2700.72 Unreviewed decisions.

One commenter questioned whether an unreviewed judge's decision has preclusive effect, in the sense of res judicata or collateral estoppel, in other proceedings before judges. A judge's decision not reviewed by the Commission does not have such preclusive effect. The Commission, as an appellate body, is not bound by the unreviewed decisions of its judges.

§ 2700.73 Procedure for intervention.

Some comments opposed the proposed rule on the grounds that intervention should not be permitted after trial-level proceedings. The Commission believes that, although appellate intervention may occur only infrequently, it may be helpful. Paragraph (d) requires that a motion for intervention at the appellate level must set forth the reasons excusing the movant's failure to move for intervention before the judge. In response to comments, the rule requires that a motion to intervene be filed within 30 days after the Commission directs review, unless later filing is permitted for good cause shown.

§ 2700.74 Procedure for participation as amicus curiae.

In response to comments, paragraph (a) deletes the proposed provision that a motion to participate as amicus curiae be filed not later than 30 days after the Commission's direction for review. Paragraph (a) states that, after a case is directed for review, any person may move to participate as amicus.

Paragraph (b) provides that an amicus brief normally is to be filed within the briefing period of the party whose position the amicus supports. Paragraph (b) also recognizes that, in the interest of avoiding duplication of argument, the Commission may permit the filing of an amicus brief within 20 days of the close of the relevant briefing period, provided that the motion for participation is filed within the briefing period allotted to the party whose position the amicus supports.

§ 2700.75 Briefs.

Practitioners are advised to familiarize themselves with all procedures relevant to the time for filing briefs and the length of briefs. Paragraph (d) provides that a motion for extension of time for filing a brief will not be granted except for good cause shown.

§ 2700.76 Interlocutory review.

In response to comments, paragraph (b) provides that a petition for interlocutory review shall not exceed 15 pages in length.

§ 2700.77 Oral argument.

Section 2700.77 provides that a party's request for oral argument shall be made by separate motion no later than at the time of filing its opening or response brief.

Subpart I—Miscellaneous

§ 2700.80 Standards of conduct; disciplinary proceedings.

Paragraph (c)(3) provides that, in referring a matter for disciplinary hearing before a judge, the Commission may designate counsel to prosecute the matter before the judge. This provision conforms to standard litigation procedure in such matters.

§ 2700.81 Recusal and disqualification.

Paragraph (a) clarifies that a Commissioner or judge may recuse himself from a proceeding whenever he deems it appropriate. Paragraphs (b) and (c) continue the present procedure for requesting the withdrawal of a Commissioner or judge on the grounds of bias or other disqualification and the steps to be taken if the Commissioner or judge does not withdraw.

§ 2700.82 Ex parte communications.

The proposed rule was further modified in response to comments and upon further consideration. Paragraph (a)(1) clarifies that a "status or informational request" does not constitute an ex parte communication. Paragraph (a)(2) defines "status or informational request" as a "request for

a status report on any matter or proceeding or a request concerning filing or other docket information." Paragraph (b) adds amici to the group of persons covered by the prohibition against ex parte communications. Paragraph (d) specifies that inquiries concerning filing requirements, the status of cases before the Commission, or docket information shall be directed to the Commission's Office of General Counsel or to its Docket Office.

§ 2700.84 Effective date.

Section 2700.84 provides that the final rules are effective 60 days after publication in the **Federal Register**. The final rules will apply to cases initiated after they take effect. The final rules also will apply to further proceedings in cases then pending, except to the extent that such application would be infeasible or unfair, in which case the present rules of procedure would apply

Miscellaneous

A number of additional new procedures were also suggested in the public comments. To the extent that the final revisions do not incorporate such new procedures, commenters are advised that such suggestions were considered and rejected. The Commission notes that one commenter proposed a new rule on amendment of pleadings. The Commission will continue to deal with that area adjudicatively rather than by procedural rule. See, e.g., Cyprus Empire Corp., 12 FMSHRC 911, 916 (May 1990).

Public Comment

The Commission will receive any further comment on these final rules during the 60-day period before they take effect. The Commission welcomes comment on its procedural rules, which are always open to comment and suggestions.

List of Subjects in 29 CFR Part 2700

Hearing and appeal procedures, Administrative practice and procedure, Ex parte communications, Government employees, Lawyers.

For the reasons set forth in the preamble, part 2700 of chapter XXVII of title 29 of the Code of Federal Regulations is revised as follows:

PART 2700—PROCEDURAL RULES

Subpart A—General Provisions

Sec.
2700.1 Scope; applicability of other rules; construction.
2700.2 Definitions.
2700.3 Who may practice.
2700.4 Parties, intervenors and amici curiae.
2700.5 General requirements for pleadings and other documents; status or informational requests.
2700.6 Signing of documents.
2700.7 Service.
2700.8 Computation of time.
2700.9 Extensions of time.
2700.10 Motions.
2700.11 Withdrawal of pleading.
2700.12 Consolidation of proceedings.

Subpart B—Contests of Citations and Orders

2700.20 Notice of contest of a citation or order issued under section 104 of the Act.
2700.21 Effect of failure to file notice of contest of citation.
2700.22 Notice of contest of imminent danger withdrawal orders under section 107 of the Act.
2700.23 Review of a subsequent citation or order.

Subpart C—Contests of Proposed Penalties

2700.25 Proposed penalty assessment.
2700.26 Notice of contest of proposed penalty assessment.
2700.27 Effect of failure to contest proposed penalty assessment.
2700.28 Filing of petition for assessment of penalty with the Commission.
2700.29 Answer.
2700.30 Assessment of penalty.
2700.31 Penalty settlement.

Subpart D—Complaints for Compensation

2700.35 Time to file.
2700.36 Contents of complaint.
2700.37 Answer.

Subpart E—Complaints of Discharge, Discrimination or Interference

2700.40 Who may file.
2700.41 Time to file.
2700.42 Contents of complaint.
2700.43 Answer.
2700.44 Petition for assessment of penalty in discrimination cases.
2700.45 Temporary reinstatement proceedings.

Subpart F—Applications for Temporary Relief

2700.46 Procedure.
2700.47 Contents of application.

Subpart G—Hearings

2700.50 Assignment of Judges.
2700.51 Hearing sites.
2700.52 Expedition of proceedings.
2700.53 Prehearing conferences and statements.
2700.54 Notice of hearing.
2700.55 Powers of Judges.
2700.56 Discovery; general.
2700.57 Depositions.
2700.58 Interrogatories, requests for admissions and requests for production of documents.
2700.59 Failure to cooperate in discovery; sanctions.
2700.60 Subpoenas.
2700.61 Name of miner informant.
2700.62 Name of miner witness.
2700.63 Evidence; presentation of case.
2700.64 Retention of exhibits.
2700.65 Proposed findings, conclusions and orders.
2700.66 Summary disposition of proceedings.
2700.67 Summary decision of the Judge.
2700.68 Substitution of the Judge.
2700.69 Decision of the Judge.

Subpart H—Review by the Commission

2700.70 Petitions for discretionary review.
2700.71 Review by the Commission on its own motion.
2700.72 Unreviewed decisions.
2700.73 Procedure for intervention.
2700.74 Procedure for participation as amicus curiae.
2700.75 Briefs.
2700.76 Interlocutory review.
2700.77 Oral argument.
2700.78 Reconsideration.
2700.79 Correction of clerical errors.

Subpart I—Miscellaneous

2700.80 Standards of conduct; disciplinary proceedings.
2700.81 Recusal and disqualification.
2700.82 Ex parte communications.
2700.83 Authority to sign orders.
2700.84 Effective date.

Authority: 30 U.S.C. 815, 820 and 823.

Subpart A—General Provisions

§ 2700.1 Scope; applicability of other rules; construction.

(a) *Scope.* This part sets forth rules applicable to proceedings before the Federal Mine Safety and Health Review Commission and its Administrative Law Judges.

(b) *Applicability of other rules.* On any procedural question not regulated by the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. ("the Act"), these Procedural Rules, or the Administrative Procedure Act (particularly 5 U.S.C. 554 and 556), the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure.

(c) *Construction.* These rules shall be construed to secure the just, speedy and inexpensive determination of all proceedings, and to encourage the participation of miners and their representatives. Wherever the masculine gender is used in these rules, the feminine gender is also implied.

§ 2700.2 Definitions.

For purposes of this part, the definitions contained in section 3 of the Act, 30 U.S.C. 802, apply.

§ 2700.3 Who may practice.

(a) *Attorneys.* Attorneys admitted to practice before the highest court of any State, Territory, District, Commonwealth or possession of the United States are permitted to practice before the Commission.

(b) *Other persons.* A person who is not authorized to practice before the Commission as an attorney under paragraph (a) of this section may practice before the Commission as a representative of a party if he is:

(1) A party;

(2) A representative of miners;

(3) An owner, partner, officer or employee of a party when the party is a labor organization, an association, a partnership, a corporation, other business entity, or a political subdivision; or

(4) Any other person with the permission of the presiding judge or the Commission.

(c) *Entry of appearance.* A representative of a party shall enter an appearance by signing the first document filed on behalf of the party; filing a written entry of appearance with the Commission or Judge; or, if the Commission or Judge permits, by orally entering an appearance in open hearing.

(d) *Withdrawal of appearance.* Any representative of a party desiring to withdraw his appearance shall file a motion with the Commission or Judge. The motion to withdraw may, in the discretion of the Commission or Judge, be denied where it is necessary to avoid undue delay or prejudice to the rights of a party.

§ 2700.4 Parties, intervenors, and amici curiae.

(a) *Party status.* A person, including the Secretary or an operator, who is named as a party or who is permitted to intervene, is a party. In a proceeding instituted by the Secretary under section 105(c)(2) of the Act, 30 U.S.C. 815(c)(2), the complainant on whose behalf the Secretary has filed the complaint is a party and may present additional evidence on his own behalf. A miner, applicant for employment, or representative of a miner who has filed a complaint with the Commission under sections 105(c)(3) or 111 of the Act, 30 U.S.C. 815(c)(3) and 821, and an affected miner or his representative who has become a party in accordance with paragraph (b) of this section, are parties.

(b) *Intervention.* (1) *Intervention by affected miners and their representatives.* Before a case has been assigned to a Judge, affected miners or their representatives shall be permitted to intervene upon filing a written notice of intervention with the Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street, N.W., Sixth Floor, Washington, DC 20006–3867. If the case has been assigned to a Judge, the notice of intervention shall be filed with the Judge. The Commission or the Judge shall mail forthwith a copy of the notice to all parties. After the start of the hearing, affected miners or their representatives may intervene upon just terms and for good cause shown.

(2) *Intervention by other persons.* (i) Motions by other persons for leave to intervene shall be filed before the start of a hearing on the merits unless the Judge, for good cause shown, allows a later filing. The motion shall set forth:

(A) The interest of the movant relating to the property or events that are the subject of the proceeding;

(B) The reasons why such interest is not otherwise adequately represented by the parties already involved in the proceeding; and

(C) A showing that intervention will not unduly delay or prejudice the adjudication of the issues.

(ii) Such intervention is not a matter of right but of the sound discretion of the Judge. In denying a motion to intervene, the Judge may alternatively permit the movant to participate in the proceeding as amicus curiae.

(c) *Procedure for participation as amicus curiae.* Any person may move to participate as amicus curiae in a proceeding before a Judge. Such participation as amicus curiae shall not be a matter of right but of the sound discretion of the Judge. A motion for participation as amicus curiae shall set forth the interest of the movant and show that the granting of the motion will not unduly delay or prejudice the adjudication of the issues. If the Judge permits amicus curiae participation, the Judge's order shall specify the time within which such amicus curiae memorandum, brief, or other pleading must be filed and the time within which a reply may be made. The movant may conditionally attach its memorandum, brief, or other pleading to its motion for participation as amicus curiae.

§ 2700.5 General requirements for pleadings and other documents; status or informational requests.

(a) *Jurisdiction.* A proposal for a penalty under section 110, 30 U.S.C. 820; an answer to a notice of contest of a citation or withdrawal order issued under section 104, 30 U.S.C. 814; an answer to a notice of contest of an order issued under section 107, 30 U.S.C. 817; a complaint issued under sections 105(c) or 111, 30 U.S.C. 815(c) and 821; and an application for temporary reinstatement under section 105(c)(2), 30 U.S.C. 815(c)(2), shall allege that the violation or imminent danger took place in or involves a mine that has products which enter commerce or has operations or products that affect commerce. Jurisdictional facts that are alleged are deemed admitted unless specifically denied in a responsive pleading.

(b) *Where to file.* Until a Judge has been assigned to a case, all documents shall be filed with the Commission. Documents filed with the Commission shall be addressed to the Executive Director and mailed or delivered to the Docket Office, Federal Mine Safety and Health Review Commission, 1730 K Street, N.W., Sixth Floor, Washington, DC 20006–3867. After a Judge has been assigned, and before he issues a decision, documents shall be filed with the Judge at the address set forth on the notice of assignment. Documents filed in connection with interlocutory review shall be filed with the Commission in accordance with § 2700.76. After the Judge has issued his final decision, documents shall be filed with the Commission.

(c) *Necessary information.* All documents shall be legible and shall clearly identify on the cover page the filing party by name. All documents shall be dated and shall include the assigned docket number and the filing person's address and telephone number. Written notice of any change in address or telephone number shall be given promptly to the Commission or the Judge and all other parties.

(d) *Manner and date of filing.* A notice of contest of a citation or order, a petition for assessment of penalty, a complaint for compensation, a complaint of discharge, discrimination or interference, an application for temporary reinstatement, and an application for temporary relief shall be filed by personal delivery, including courier service, or by registered or certified mail, return receipt requested. All subsequent documents that are filed with a Judge or the Commission may be filed by first class mail, including express mail, or by personal delivery. When filing is by personal delivery, filing is effective upon receipt. When filing is by mail, filing is effective upon mailing, except that the filing of a petition for discretionary review with the Commission is effective upon receipt. *See* § 2700.70. Filing by facsimile transmission is permissible only when specifically permitted by these rules (*see* §§ 2700.52 and 2700.70), or when otherwise allowed by a Judge or the Commission. Filing by facsimile transmission is effective upon receipt.

(e) *Number of copies.* In cases before a Judge, two copies shall be filed for each docket; in cases before the Commission, seven copies shall be filed; but if the filing party is not represented by a lawyer or other representative, one copy shall be sufficient. When filing is by facsimile transmission, the

appropriate number of non-facsimile copies must be filed with the Judge or Commission within 3 days of the facsimile transmission.

(f) *Size of paper.* Pleadings and other documents shall be 8½ by 11 inches in size.

(g) *Status or informational requests.* Any inquiries concerning filing requirements, the status of cases before the Commission, or docket information shall be directed to the Office of General Counsel or the Docket Office of the Federal Mine Safety and Health Review Commission, 1730 K St., N.W., Sixth Floor, Washington, DC 20006–3867.

§ 2700.6 Signing of documents.

When a person who appears in a representative capacity signs a document, that person's signature shall constitute his certificate:

(a) That under the provisions of the law, including these rules and all federal conflict of interest statutes, he is authorized and qualified to represent the particular party in the matter; and

(b) That he has read the document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 2700.7 Service.

(a) *Generally.* A copy of each document filed with the Commission shall be served on all parties. In addition, a copy of a notice of contest of a citation or order, a petition for assessment of penalty, a discrimination complaint, a complaint for compensation, and an application for temporary relief shall be served upon the representative of miners, if known.

(b) *Posting.* A copy of an order, citation, notice, or decision required under section 109 of the Act, 30 U.S.C. 819, to be posted on a mine bulletin board shall, upon receipt, be immediately posted on such bulletin board by the operator.

(c) *Methods of service.* A notice of contest of a citation or order, a proposed penalty assessment, a petition for assessment of penalty, a complaint for compensation, a complaint of discharge, discrimination or interference, an application for temporary reinstatement, and an application for temporary relief shall be served by personal delivery, including courier service, or by registered or certified mail, return receipt requested. All subsequent papers may be served by personal delivery or by first class mail, including express mail service, with the exception of the papers specified in § 2700.45 (Temporary reinstatement proceedings). Service by mail is effective upon mailing. Service by personal delivery is effective upon receipt. When filing by facsimile transmission (see § 2700.5(d)), the filing party must also serve by facsimile transmission or by a means as expeditious as facsimile. Service by facsimile transmission is effective upon receipt.

(d) *Service upon representative.* Whenever a party is represented by an attorney or other authorized representative, subsequent service shall be made upon the attorney or other authorized representative.

(e) *Proof of service.* All pleadings and other filed documents shall be accompanied by a statement setting forth the date and manner of service.

§ 2700.8 Computation of time.

In computing any period of time prescribed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or federal holiday, in which event the period runs until the end of the next business day. When the period of time prescribed is less than 7 days, intermediate Saturdays, Sundays, and federal holidays shall be excluded in the computation. When service of a document is by mail, 5 days shall be added to the time allowed by these rules for the filing of a response or other documents.

§ 2700.9 Extensions of time.

The time for filing or serving any document may be extended for good cause shown. A request for an extension of time shall be filed before the expiration of the time allowed for the filing or serving of the document.

§ 2700.10 Motions.

(a) An application for an order shall be by motion which, unless made during a hearing or a conference, shall be made in writing and shall set forth the relief or order sought.

(b) Written motions shall be set forth in a document separate from other pleadings.

(c) A statement in opposition to a written motion may be filed by any party within 10 days after service upon the party. Unless otherwise ordered, oral argument on motions will not be heard.

§ 2700.11 Withdrawal of pleading.

A party may withdraw a pleading at any stage of a proceeding with the approval of the Judge or the Commission.

§ 2700.12 Consolidation of proceedings.

The Commission and its Judges may at any time, upon their own motion or a party's motion, order the consolidation of proceedings that involve similar issues.

Subpart B—Contests of Citations and Orders

§ 2700.20 Notice of contest of a citation or order issued under section 104 of the Act.

(a) *Who may contest.* (1) An operator may contest:

(i) A citation or an order issued under section 104 of the Act, 30 U.S.C. 814;

(ii) A modification of a citation or an order issued under section 104 of the Act; and

(iii) The reasonableness of the length of time fixed for abatement in a citation or modification thereof issued under section 104 of the Act.

(2) A miner or representative of miners may contest:

(i) The issuance, modification or termination of any order issued under section 104 of the Act; and

(ii) The reasonableness of the length of time fixed for abatement in a citation or modification thereof issued under section 104 of the Act.

(b) *Time to contest.* Contests filed by an operator pursuant to paragraph (a)(1) of this section shall be filed with the Secretary at the appropriate Regional Solicitor's Office or at the Solicitor's Office, Mine Safety and Health Division, Arlington, Virginia, within 30 days of receipt by the operator of the contested citation, order, or modification. Contests filed by a miner or representative of miners pursuant to paragraph (a)(2) of this section shall be filed in the same manner within 30 days of receipt by the miner or representative of miners of the contested order, modification, or termination.

(c) *Notification by the Secretary.* The Secretary, in accordance with section 105(d) of the Act, 30 U.S.C. 815(d), shall immediately advise the Commission of such notice of contest upon its receipt.

(d) *Copy to Commission.* The contesting party shall also file a copy of his notice of contest with the Commission at the time he files with the Secretary.

(e) *Contents of notice of contest.* (1) A notice of contest shall contain a short and plain statement of:

(i) The party's position with respect to each issue of law and fact that the party contends is pertinent; and

(ii) The relief requested by the party.

(2) A legible copy of the contested citation or order shall be attached to the notice of contest. If a legible copy is not available, the notice of contest shall set forth the text of the contested citation or order.

(f) *Answer.* Within 20 days after service of a notice of contest, the Secretary shall file an answer responding to each allegation of the notice of contest.

§ 2700.21 Effect of failure to file notice of contest of citation.

An operator's failure to file a notice of contest of a citation or order issued under section 104 of the Act, 30 U.S.C. 814, shall not preclude the operator from challenging, in a penalty proceeding, the fact of violation or any special findings contained in a citation or order including the assertion in the citation or order that the violation was of a significant and substantial nature or was caused by the operator's unwarrantable failure to comply with the standard.

§ 2700.22 Notice of contest of imminent danger withdrawal orders under section 107 of the Act.

(a) *Time to file.* A notice of contest of a withdrawal order issued under section 107 of the Act, 30 U.S.C. 817, or any modification or termination of the order, shall be filed with the Commission by the contesting party within 30 days of receipt of the order or any modification or termination of the order.

(b) *Contents of notice of contest.* (1) A notice of contest shall contain a short and plain statement of:

(i) The contesting party's position on each issue of law and fact that the contesting party contends is pertinent; and

(ii) The relief requested by the contesting party.

(2) A legible copy of the contested order shall be attached to the notice of contest. If a legible copy is not available, the notice of contest shall set forth the text of the contested order.

(c) *Answer.* Within 15 days after service of the notice of contest, the Secretary shall file an answer responding to each allegation of the notice of contest.

§ 2700.23 Review of a subsequent citation or order.

(a) The contesting party shall file any subsequent citation or order that modifies or terminates the citation or order under review within 30 days of its receipt. The notice of contest under section 105 or section 107 of the Act, 30 U.S.C. 815 and 817, unless withdrawn, shall be deemed to challenge any such subsequent citation or order.

(b) A person who is not a party in a pending proceeding for review of a citation or order may obtain review of a modification or termination of the citation or order by filing a notice of contest under section 105 or section 107 of the Act. The notice of contest shall be filed within 30 days of receipt of the citation or order that modifies or terminates the citation or order being reviewed.

Subpart C—Contests of Proposed Penalties

§ 2700.25 Proposed penalty assessment.

The Secretary, by certified mail, shall notify the operator or any other person against whom a penalty is proposed of the violation alleged, the amount of the proposed penalty assessment, and that such person shall have 30 days to notify the Secretary that he wishes to contest the proposed penalty assessment.

§ 2700.26 Notice of contest of proposed penalty assessment.

A person has 30 days after receipt of the proposed penalty assessment within which to notify the Secretary that he contests the proposed penalty. The Secretary shall immediately transmit to the Commission the notice of contest.

§ 2700.27 Effect of failure to contest proposed penalty assessment.

If, within 30 days from the receipt of the Secretary's proposed penalty assessment, the operator or other person fails to notify the Secretary that he contests the proposed penalty, the Secretary's proposed penalty assessment shall be deemed to be a final order of the Commission not subject to review by any court or agency.

§ 2700.28 Filing of petition for assessment of penalty with the Commission.

(a) *Time to file.* Within 45 days of receipt of a timely contest of a proposed penalty assessment, the Secretary shall file with the Commission a petition for assessment of penalty.

(b) *Contents.* The petition for assessment of penalty shall list the alleged violations and the proposed penalties. Each violation shall be identified by the number and date of the citation or order and the section of the Act or regulations alleged to be violated. The petition for assessment of penalty shall state whether the citation or order has been contested and the docket number of any contest. The petition for assessment of penalty shall advise the party against whom a penalty is filed that he has 30 days to file an answer pursuant to § 2700.29.

(c) *Attachments.* A legible copy of each citation or order for which a penalty is sought shall be attached to the petition for assessment of penalty. If a legible copy is not available, the petition for assessment of penalty shall set forth the text of the citation or order.

§ 2700.29 Answer.

A party against whom a petition for assessment of penalty is filed shall file an answer within 30 days after service of the petition for assessment of penalty. An answer shall include a short and plain statement responding to each allegation of the petition.

§ 2700.30 Assessment of penalty.

(a) In assessing a penalty the Judge shall determine the amount of penalty in accordance with the six statutory criteria contained in section 110(i) of the Act, 30 U.S.C. 820(i), and incorporate such determination in a written decision. The decision shall contain findings of fact and conclusions of law on each of the statutory criteria and an order requiring that the penalty be paid.

(b) In determining the amount of penalty, neither the Judge nor the Commission shall be bound by a penalty proposed by the Secretary or by any offer of settlement made by a party.

§ 2700.31 Penalty settlement.

(a) *General.* A proposed penalty that has been contested before the Commission may be settled only with the approval of the Commission upon motion.

(b) *Settlement motion.* A motion to approve a penalty settlement shall include the following information for each violation:

(1) The amount of the penalty proposed by the Secretary;

(2) The amount of the penalty agreed to in settlement; and

(3) Facts in support of the penalty agreed to by the parties.

(c) *Order approving settlement.* Any order by the Judge approving a settlement shall set forth the reasons for approval and shall be supported by the record. Such order shall become the final decision of the Commission 40 days after issuance unless the Commission has directed that the order be reviewed.

Subpart D—Complaints for Compensation

§ 2700.35 Time to file.

A complaint for compensation under section 111 of the Act, 30 U.S.C. 821, shall be filed within 90 days after the beginning of the period during which the complainants are idled or would

have been idled by the order that gives rise to the claim.

§ 2700.36 Contents of complaint.

A complaint for compensation shall include:

(a) A short and plain statement of the facts giving rise to the claim, including the period for which compensation is claimed;

(b) The total amount of the compensation claimed, if known; and

(c) A legible copy of any pertinent order of withdrawal or, if a legible copy is not available, the text of the order.

§ 2700.37 Answer.

Within 30 days after service of a complaint for compensation, the operator shall file an answer responding to each allegation of the complaint.

Subpart E—Complaints of Discharge, Discrimination or Interference

§ 2700.40 Who may file.

(a) *The Secretary.* A discrimination complaint under section 105(c)(2) of the Act, 30 U.S.C. 815(c)(2), shall be filed by the Secretary if, after an investigation conducted pursuant to section 105(c)(2), the Secretary determines that a violation of section 105(c)(1), 30 U.S.C. 815(c)(1), has occurred.

(b) *Miner, representative of miners, or applicant for employment.* A discrimination complaint under section 105(c)(3) of the Act, 30 U.S.C. 815(c)(3), may be filed by the complaining miner, representative of miners, or applicant for employment if the Secretary, after investigation, has determined that the provisions of section 105(c)(1) of the Act, 30 U.S.C. 815(c)(1), have not been violated.

§ 2700.41 Time to file.

(a) *The Secretary.* A discrimination complaint shall be filed by the Secretary within 30 days after his written determination that a violation has occurred.

(b) *Miner, representative of miners, or applicant for employment.* A discrimination complaint may be filed by a complaining miner, representative of miners, or applicant for employment within 30 days after receipt of a written determination by the Secretary that no violation has occurred.

§ 2700.42 Contents of complaint.

A discrimination complaint shall include a short and plain statement of the facts, setting forth the alleged discharge, discrimination or interference, and a statement of the relief requested.

§ 2700.43 Answer.

Within 30 days after service of a discrimination complaint, the respondent shall file an answer responding to each allegation of the complaint.

§ 2700.44 Petition for assessment of penalty in discrimination cases.

(a) *Petition for assessment of penalty in Secretary's complaint.* A discrimination complaint filed by the Secretary shall propose a civil penalty of a specific amount for the alleged violation of section 105(c) of the Act, 30 U.S.C. 815(c). The petition for assessment of penalty shall include a short and plain statement of supporting reasons based on the criteria for penalty assessment set forth in section 110(i) of the Act. 30 U.S.C. 820(i).

(b) *Petition for assessment of penalty after sustaining of complaint by miner, representative of miners, or applicant for employment.* Immediately upon issuance of a decision by a Judge sustaining a discrimination complaint brought pursuant to section 105(c)(3), 30 U.S.C. 815(c)(3), the Judge shall notify the Secretary in writing of such determination. The Secretary shall file with the Commission a petition for assessment of civil penalty within 45 days of receipt of such notice.

§ 2700.45 Temporary reinstatement proceedings.

(a) *Service of pleadings.* A copy of each document filed with the Commission in a temporary reinstatement proceeding shall be served on all parties either by personal delivery, including courier service, or by certified or registered mail, return receipt requested.

(b) *Contents of application.* An application for temporary reinstatement shall state the Secretary's finding that the miner's discrimination complaint was not frivolously brought and shall be accompanied by an affidavit setting forth the Secretary's reasons supporting his finding. The application also shall include a copy of the miner's complaint to the Secretary, and proof of notice to and service on the person against whom relief is sought by the most expeditious means of notice and delivery reasonably available.

(c) *Request for hearing.* Within 10 days following receipt of the Secretary's application for temporary reinstatement, the person against whom relief is sought shall advise the Commission's Chief Administrative Law Judge or his designee, and simultaneously notify the Secretary, whether a hearing on the application is requested. If no hearing is requested, the Judge assigned to the matter shall review immediately the Secretary's application and, if based on the contents thereof the Judge determines that the miner's complaint was not frivolously brought, he shall issue immediately a written order of temporary reinstatement. If a hearing on the application is requested, the hearing shall be held within 10 days following receipt of the request for hearing by the Commission's Chief Administrative Law Judge or his designee, unless compelling reasons are shown in an accompanying request for an extension of time.

(d) *Hearing.* The scope of a hearing on an application for temporary reinstatement is limited to a determination as to whether the miner's complaint was frivolously brought. The burden of proof shall be upon the Secretary to establish that the complaint was not frivolously brought. In support of his application for temporary reinstatement, the Secretary may limit his presentation to the testimony of the complainant. The respondent shall have an opportunity to cross-examine any witnesses called by the Secretary and may present testimony and documentary evidence in support of its position that the complaint was frivolously brought.

(e) *Order on application.* Within 7 days following the close of a hearing on an application for temporary reinstatement, the Judge shall issue a written order granting or denying the application. However, in extraordinary circumstances, the Judge's time for issuing an order may be extended as deemed necessary by the Judge. The Judge's order shall include findings and conclusions supporting the determination as to whether the miner's complaint has been frivolously brought. The parties shall be notified of his determination by the most expeditious means reasonably available. Service of the order granting or denying the application shall be by certified or registered mail, return receipt requested.

(f) *Review of order.* Review by the Commission of a Judge's written order granting or denying an application for temporary reinstatement may be sought by filing with the Commission a petition for review with supporting arguments within 5 days following receipt of the Judge's written order. The opposing party shall be served simultaneously. The filing of a petition for review shall not stay the effect of the Judge's order unless the Commission so directs. Any response shall be filed within 5 days following receipt of a petition. The Commission's ruling on a petition for review shall be rendered within 10 days following receipt of any response or the expiration of the period for filing such

response. In extraordinary circumstances, the Commission's time for decision may be extended.

(g) *Dissolution of order.* If, following an order of temporary reinstatement, the Secretary determines that the provisions of section 105(c)(1), 30 U.S.C. 815(c)(1), have not been violated, the Judge shall be so notified and shall enter an order dissolving the order of reinstatement. An order dissolving the order of reinstatement shall not bar the filing of an action by the miner in his own behalf under section 105(c)(3) of the Act, 30 U.S.C. 815(c)(3), and § 2700.40(b) of these rules.

Subpart F—Applications for Temporary Relief

§ 2700.46 Procedure.

(a) *When to file.* As provided in section 105(b)(2) of the Act, 30 U.S.C. 815(b)(2), an application for temporary relief from any modification or termination of any order or from any order issued under section 104 of the Act, 30 U.S.C. 814, may be filed at any time before such order becomes final. No temporary relief shall be granted with respect to a citation issued under sections 104(a) or (f) of the Act. 30 U.S.C. 814(a) and (f).

(b) *Statements in opposition.* Any party opposing the application shall file a statement in opposition within 4 days after receipt of the application.

(c) *Prior hearing required.* Temporary relief shall not be granted prior to a hearing on such application.

§ 2700.47 Contents of application.

(a) An application for temporary relief shall contain:

(1) A showing of substantial likelihood that the findings and decision of the Judge or the Commission will be favorable to the applicant;

(2) A statement of the specific relief requested; and

(3) A showing that such relief will not adversely affect the health and safety of miners in the affected mine.

(b) An application for temporary relief may be supported by affidavits or other evidence.

Subpart G—Hearings

§ 2700.50 Assignment of Judges.

Judges shall be assigned cases in rotation as far as practicable.

§ 2700.51 Hearing sites.

All cases will be assigned a hearing site by order of the Judge. The Judge shall give due regard to the convenience and necessity of the parties or their representatives and witnesses, the availability of suitable hearing facilities, and other relevant factors.

§ 2700.52 Expedition of proceedings.

(a) *Motions.* In addition to making a written motion pursuant to § 2700.10, a party may request expedition of proceedings by oral motion, with concurrent notice to all parties, or may file and serve such motion by facsimile. Oral motions shall be reduced to writing within 24 hours.

(b) *Timing of hearing.* Unless all parties consent to an earlier hearing, an expedited hearing on the merits of the case shall not be held on less than 4 days notice.

§ 2700.53 Prehearing conferences and statements.

(a) The Judge may require the parties to participate in a prehearing conference, either in person or by telephone. The participants at any such conference may consider and take action with respect to:

(1) The formulation and simplification of the issues;

(2) The possibility of obtaining stipulations, admissions of fact and of documents that will avoid unnecessary proof and advance rulings from the Judge on the admissibility of evidence;

(3) The exchange of exhibits and the names of witnesses and a synopsis of the testimony expected from each witness;

(4) The necessity or desirability of amendments to the pleadings and the joinder of parties;

(5) The possibility of agreement disposing of any or all of the issues in dispute;

(6) Such other matters as may aid in the expedition of the hearing or the disposition of the case.

(b) The Judge may also require the parties to submit prehearing statements addressing one or more of the matters set forth in paragraph (a) of this section.

§ 2700.54 Notice of hearing.

Except in expedited proceedings, written notice of the time, place, and nature of the hearing, the legal authority under which the hearing is to be held, and the matters of fact and law asserted shall be given to all parties at least 20 days before the date set for hearing. The notice shall be mailed by certified or registered mail, return receipt requested.

§ 2700.55 Powers of Judges.

Subject to these rules, a Judge is empowered to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas authorized by law;

(c) Rule on offers of proof and receive relevant evidence;

(d) Order depositions to be taken;

(e) Regulate the course of the hearing;

(f) Hold conferences for the settlement or simplification of the issues;

(g) Dispose of procedural requests or similar matters;

(h) Make decisions in the proceedings before him, provided that he shall not be assigned to make a recommended decision; and

(i) Take other action authorized by these rules, by 5 U.S.C. 556, or by the Act.

§ 2700.56 Discovery; general.

(a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; or requests for admissions, for production of documents or objects or for permission to enter upon property for inspecting, copying, photographing, and gathering information.

(b) *Scope of discovery.* Parties may obtain discovery of any relevant, non-privileged matter that is admissible evidence or appears likely to lead to the discovery of admissible evidence.

(c) *Limitation of discovery.* Upon motion by a party or by the person from whom discovery is sought or upon his own motion, a Judge may, for good cause shown, limit discovery to prevent undue delay or to protect a party or person from oppression or undue burden or expense.

(d) *Initiation of discovery.* Discovery shall be initiated within 20 days after an answer to a notice of contest, an answer to a petition for assessment of penalty, or an answer to a complaint under sections 105(c) or 111 of the Act has been filed. 30 U.S.C. 815(c) and 30 U.S.C. 821. For good cause shown, the Judge may permit discovery to be initiated after that date.

(e) *Completion of discovery.* Discovery shall be completed within 40 days after its initiation. For good cause shown, the Judge may extend the time for discovery.

§ 2700.57 Depositions.

(a) *Generally.* Any party, without leave of the Judge, may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories.

(b) *Orders for deposition.* If the parties are unable to agree, the time, place, and manner of taking depositions shall be governed by order of the Judge.

§ 2700.58 Interrogatories, requests for admissions and requests for production of documents.

(a) *Interrogatories.* Any party, without leave of the Judge, may serve written

interrogatories upon another party. A party served with interrogatories shall answer each interrogatory separately and fully in writing under oath within 25 days of service unless the proponent of the interrogatories agrees to a longer time. The Judge may order a shorter or longer time period for responding. A party objecting to an interrogatory shall state the basis for the objection in its answer.

(b) *Requests for admissions.* Any party, without leave of the Judge, may serve on another party a written request for admissions. A party served with a request for admissions shall respond to each request separately and fully in writing within 25 days of service, unless the party making the request agrees to a longer time. The Judge may order a shorter or longer time period for responding. A party objecting to a request for admissions shall state the basis for the objection in its response. Any matter admitted under this rule is conclusively established for the purpose of the pending proceeding unless the Judge, on motion, permits withdrawal or amendment of the admission.

(c) *Request for production, entry or inspection.* Any party, without leave of the Judge, may serve on another party a written request to produce and permit inspection, copying or photocopying of designated documents or objects, or to permit a party or his agent to enter upon designated property to inspect and gather information. A party served with such a request shall respond in writing within 25 days of service unless the party making the request agrees to a longer time. The Judge may order a shorter or longer period for responding. A party objecting to a request for production, entry or inspection shall state the basis for the objection in its response.

§ 2700.59. Failure to cooperate in discovery; sanctions.

Upon the failure of any person, including a party, to respond to a discovery request or upon an objection to such a request, the party seeking discovery may file a motion with the Judge requesting an order compelling discovery. If any person, including a party, fails to comply with an order compelling discovery, the Judge may make such orders with regard to the failure as are just and appropriate, including deeming as established the matters sought to be discovered or dismissing the proceeding in favor of the party seeking discovery. For good cause shown the Judge may excuse an objecting party from complying with the request.

§ 2700.60 Subpoenas.

(a) *Compulsory attendance of witnesses and production of documents.* The Commission and its Judges are authorized to issue subpoenas, on their own motion or on the oral or written application of a party, requiring the attendance of witnesses and the production of documents or physical evidence. A subpoena may be served by any person who is at least 18 years of age. A subpoena may also be served by registered or certified mail, return receipt requested, but, in such case, any risk of delivery is on the serving party. A copy of the subpoena bearing a certificate of service shall be filed with the Commission or the Judge.

(b) *Fees payable to witnesses.* Subpoenaed witnesses shall be paid the same fees and mileage as are paid in the district courts of the United States. The witness fees and mileage shall be paid by the party at whose request the witness appears, or by the Commission if a witness is subpoenaed on the motion of the Commission or a Judge. This paragraph does not apply to Government employees who are called as witnesses by the Government.

(c) *Motions to revoke or modify subpoenas.* Any person served with a subpoena may move within 5 days of service or at the hearing, whichever is sooner, to revoke or modify the subpoena. The Commission or the Judge, as appropriate, shall revoke or modify the subpoena if it seeks information outside the proper scope of discovery as set forth in § 2700.56(b); or if it does not describe with sufficient particularity the evidence required to be produced; or if for any other reason it is found to be invalid or unreasonable. The Commission or the Judge shall set forth a concise statement of the grounds for such ruling.

(d) *Availability of transcript.* Persons compelled to submit evidence at a public proceeding are entitled to obtain, on payment of prescribed costs, a transcript of that part of the proceeding that sets forth their testimony or refers to their production of evidence.

(e) *Failure to comply.* Upon the failure of any person to comply with an order to testify or with a subpoena issued by the Commission or the Judge, the Judge or the Commission's General Counsel, at the request of the Judge or at the direction of the Commission, may undertake to initiate proceedings in the appropriate district court of the United States for the enforcement of the subpoena.

§ 2700.61 Name of miner informant.

A Judge shall not, except in extraordinary circumstances, disclose or order a person to disclose to an operator or his agent the name of an informant who is a miner.

§ 2700.62 Name of miner witness.

A Judge shall not, until 2 days before a hearing, disclose or order a person to disclose to an operator or his agent the name of a miner who is expected by the Judge to testify or whom a party expects to summon or call as a witness.

§ 2700.63 Evidence; presentation of case.

(a) Relevant evidence, including hearsay evidence, that is not unduly repetitious or cumulative is admissible.

(b) The proponent of an order has the burden of proof. A party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

§ 2700.64 Retention of exhibits.

All exhibits received in evidence in a hearing or submitted for the record in any proceeding before the Commission shall be retained with the official record of the proceeding. The withdrawal of original exhibits may be permitted by the Commission or the Judge, upon request and after notice to the other parties, if true copies are substituted, where practical, for the originals.

§ 2700.65 Proposed findings, conclusions and orders.

The Judge may require the submission of proposed findings of fact, conclusions of law, and orders, together with supporting briefs. The proposals shall be served upon all parties, and shall contain adequate references to the record and authorities.

§ 2700.66 Summary disposition of proceedings.

(a) *Generally.* When a party fails to comply with an order of a Judge or these rules, except as provided in paragraph (b) of this section, an order to show cause shall be directed to the party before the entry of any order of default or dismissal. The order shall be mailed by registered or certified mail, return receipt requested.

(b) *Failure to attend hearing.* If a party fails to attend a scheduled hearing, the Judge, where appropriate, may find the party in default or dismiss the proceeding without issuing an order to show cause.

(c) *Penalty proceedings.* When the Judge finds a party in default in a civil penalty proceeding, the Judge shall also enter an order assessing appropriate penalties and directing that such penalties be paid.

§ 2700.67 Summary decision of the Judge.

(a) *Filing of motion for summary decision.* At any time after commencement of a proceeding and no later than 10 days before the date fixed for the hearing on the merits, a party may move the Judge to render summary decision disposing of all or part of the proceeding.

(b) *Grounds.* A motion for summary decision shall be granted only if the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows:

(1) That there is no genuine issue as to any material fact; and

(2) That the moving party is entitled to summary decision as a matter of law.

(c) *Form of motion and affidavits.* The motion may be supported by affidavits or other verified documents, and shall specify the grounds upon which the party seeks relief. Supporting and opposing affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to the affidavit or be incorporated by reference if not otherwise a matter of record. The Judge shall permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, admissions or further affidavits. When a motion for summary decision is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for a hearing. If the party does not respond, summary decision, if appropriate, shall be entered against him.

(d) *Case not fully adjudicated on motion.* If a motion for summary decision is denied in whole or in part, the Judge shall ascertain what material facts are controverted and shall issue an order directing further proceedings as appropriate.

§ 2700.68 Substitution of the Judge.

(a) *Generally.* Should a Judge become unavailable to the Commission, the proceedings assigned to him shall be reassigned to a substitute Judge.

(b) *Substitution following a hearing.* The substitute Judge may render a decision based upon the existing record, provided the parties are notified of his intent and they are given an opportunity to object. An objection to the Judge rendering a decision based upon the existing record shall be filed within 10 days following receipt of the Judge's notice, or the objection shall be deemed to be waived. An objection shall be founded upon a showing of a need for the resolution of conflicting material testimony requiring credibility determinations. Upon good cause shown the Judge may order a further hearing on the merits, which shall be limited, so far as practicable, to the testimony in dispute.

§ 2700.69 Decision of the Judge.

(a) *Form and content of the Judge's decision.* The Judge shall make a decision that constitutes his final disposition of the proceedings. The decision shall be in writing and shall include all findings of fact and conclusions of law, and the reasons or bases for them, on all the material issues of fact, law or discretion presented by the record, and an order. If a decision is announced orally from the bench, it shall be reduced to writing after the filing of the transcript. An order by a Judge approving a settlement proposal is a decision of the Judge.

(b) *Termination of the Judge's jurisdiction.* The jurisdiction of the Judge terminates when his decision has been issued.

(c) *Correction of clerical errors.* At any time before the Commission has directed that a Judge's decision be reviewed, and on his own motion or the motion of a party, the Judge may correct clerical errors in decisions, orders or other parts of the record. After the Commission has directed that a Judge's decision be reviewed, the Judge may correct such errors with the leave of the Commission. If a Judge's decision has become the final order of the Commission, the Judge may correct such errors with the leave of the Commission.

Subpart H—Review by the Commission

§ 2700.70 Petitions for discretionary review.

(a) *Procedure.* Any person adversely affected or aggrieved by a Judge's decision or order may file with the Commission a petition for discretionary review within 30 days after issuance of the decision or order. Filing of a petition for discretionary review, including a facsimile transmission, is effective upon receipt. Two or more parties may join in the same petition; the Commission may consolidate related petitions.

(b) *Review discretionary.* Review by the Commission shall not be a matter of right but of the sound discretion of the Commission. Review by the Commission shall be granted only by affirmative vote of at least two of the Commissioners present and voting.

(c) *Grounds.* Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of the Commission;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) *Requirements.* Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record, when assignments of error are based on the record, and by statutes, regulations, or other principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the Judge had not been afforded an opportunity to pass.

(e) *Statement in opposition.* A statement in opposition to a petition for discretionary review may be filed, but the opportunity for such filing shall not require the Commission to delay its action on the petition.

(f) *Scope of review.* If a petition is granted, review shall be limited to the issues raised by the petition, unless the Commission directs review of additional issues pursuant to § 2700.71.

(g) *Denial of petition.* A petition not granted within 40 days after the issuance of the Judge's decision is deemed denied.

§ 2700.71 Review by the Commission on its own motion.

At any time within 30 days after the issuance of a Judge's decision, the Commission may, by the affirmative vote of at least two of the Commissioners present and voting, direct the case for review on its own motion. Review shall be directed only upon the ground that the decision may be contrary to law or Commission policy or that a novel question of policy has been presented. The Commission shall state in such direction for review the specific issue of law, Commission policy, or novel question of policy to be reviewed. Review shall be limited to the issues specified in such direction for review.

§ 2700.72 Unreviewed decisions.

An unreviewed decision of a Judge is not a precedent binding upon the Commission.

§ 2700.73 Procedure for intervention.

After the Commission has directed a case for review, a person may move to intervene. A motion to intervene shall be filed within 30 days after the Commission's direction for review unless the Commission, for good cause shown, allows a later filing. Intervention before the Commission shall not be a matter of right but of the sound discretion of the Commission. The movant shall set forth:

(a) A legally protectible interest directly relating to the property or events that are the subject of the case on review;

(b) A showing that the disposition of the proceeding may impair or impede his ability to protect that interest;

(c) The reasons why the movant's interest is not adequately represented by parties already involved in the proceeding; and

(d) The reasons why the movant should be excused for failing to file for intervention before the Judge. A motion for intervention shall also show that the granting of the motion will not unduly delay the proceeding or prejudice any party and shall explain why the movant's participation as an amicus curiae would be inadequate. If the Commission permits intervention, the Commission's order shall specify the time within which the intervenor's brief and any response or reply may be filed. In denying a motion to intervene, the Commission may alternatively permit the movant to participate in the proceeding as amicus curiae.

§ 2700.74 Procedure for participation as amicus curiae.

(a) After the Commission has directed a case for review, any person may move to participate as amicus curiae. Such participation before the Commission shall not be a matter of right but of the sound discretion of the Commission. A motion for participation as amicus curiae shall set forth the interest of the movant and show that the granting of the motion will not unduly delay the proceeding or prejudice any party. The movant may conditionally attach its brief to its motion for participation as amicus curiae.

(b) The brief of an amicus curiae should normally be filed within the briefing period allotted to the party whose position the amicus curiae supports. In the interest of avoiding duplication of argument, however, the Commission may permit the filing of an amicus curiae brief within 20 days after the close of the briefing period set forth in § 2700.75(a), provided that the motion for participation as amicus curiae is filed within the briefing period allotted to the party whose position the amicus curiae supports. If the Commission grants the motion for participation as amicus curiae, the Commission's order shall specify the time within which a response or reply may be made to the amicus curiae brief.

§ 2700.75 Briefs.

(a) *Time to file.* (1) *Opening and response briefs.* Within 30 days after the Commission grants a petition for discretionary review, the petitioner shall file his opening brief. If the petitioner desires, he may notify the Commission and all other parties within the 30-day period that his petition and any supporting memorandum are to constitute his brief. Other parties may file response briefs within 30 days after the petitioner's brief is served. If the Commission directs review on its own motion, all parties shall file any opening briefs within 30 days of the direction for review. In such cases, a party may file a response brief within 20 days after service of the opposing party's opening brief.

(2) *Reply briefs.* In cases where the Commission has granted a petition for discretionary review, the petitioner may file a reply brief within 20 days after the service of the response briefs.

(b) *Additional briefs.* No further briefs shall be filed except by leave of the Commission.

(c) *Length of brief.* Except by permission of the Commission, opening briefs shall not exceed 35 pages, response briefs shall not exceed 25 pages, and reply briefs shall not exceed 15 pages. A brief of an amicus curiae shall not exceed 25 pages. A brief of an intervenor shall not exceed the page limitation applicable to the party whose position it supports in affirming or reversing the Judge, or if a different position is taken, such brief shall not exceed 25 pages. Tables of contents or authorities shall not be counted against the length of a brief.

(d) *Motion for extension of time.* A motion for an extension of time to file a brief will not be granted except for good cause shown. A motion for extension of time shall be filed within the time limit prescribed for filing the brief. The Commission may decline to accept a brief that is not timely filed.

(e) *Consequences of petitioner's failure to file brief.* If a petitioner fails to timely file a brief or to designate the petition as his brief, the direction for review may be vacated.

(f) *Number of copies.* As provided in § 2700.5(e), each party shall file seven copies of its brief. If the filing party is not represented by a lawyer or other representative, one copy shall be sufficient.

§ 2700.76 Interlocutory review.

(a) *Procedure.* Interlocutory review by the Commission shall not be a matter of right but of the sound discretion of the Commission.

(1) Review cannot be granted unless:

(i) The Judge has certified, upon his own motion or the motion of a party, that his interlocutory ruling involves a controlling question of law and that in his opinion immediate review will materially advance the final disposition of the proceeding; or

(ii) The Judge has denied a party's motion for certification of the interlocutory ruling to the Commission, and the party files with the Commission a petition for interlocutory review within 30 days of the Judge's denial of such motion for certification.

(2) In the case of either paragraph (a)(1)(i) or (ii) of this section, the Commission, by a majority vote of the full Commission or a majority vote of a duly constituted panel of the Commission, may grant interlocutory review upon a determination that the Judge's interlocutory ruling involves a controlling question of law and that immediate review may materially advance the final disposition of the proceeding. Interlocutory review by the Commission shall not operate to suspend the hearing unless otherwise ordered by the Commission. Any grant or denial of interlocutory review shall be by written order of the Commission.

(b) *Petitions for interlocutory review.* Where the Judge denies a party's motion for certification of an interlocutory ruling and the party seeks interlocutory review, a petition for interlocutory review shall be in writing and shall not exceed 15 pages. A copy of the Judge's interlocutory ruling sought to be reviewed and of the Judge's order denying the petitioner's motion for certification shall be attached to the petition.

(c) *Briefs.* When the Commission grants interlocutory review, the parties shall file briefs not to exceed 25 pages within 20 days of the order granting interlocutory review unless otherwise ordered by the Commission.

(d) *Scope of review.* Unless otherwise specified in the Commission's order granting interlocutory review, review shall be confined to the issues raised in the Judge's certification or to the issues raised in the petition for interlocutory review.

§ 2700.77 Oral argument.

Oral argument may be ordered by the Commission on its own motion or on

the motion of a party. A party requesting oral argument shall do so by seperate motion no later than the time that it files its opening or response brief.

§ 2700.78 Reconsideration.

(a) A petition for reconsideration must be filed with the Commission within 10 days after a decision or order of the Commission. Any response must be filed with the Commission within 10 days of service of the petition.

(b) Unless the Commission orders otherwise, the filing of a petition for reconsideration shall not stay the effect of a decision or order of the Commission and shall not affect the finality of a decision or order for purposes of review in the courts.

§ 2700.79 Correction of clerical errors.

The Commission may correct clerical errors in its decisions at any time.

Subpart I—Miscellaneous

§ 2700.80 Standards of conduct; disciplinary proceedings.

(a) *Standards of conduct.* Individuals practicing before the Commission and Commission Judges shall conform to the standards of ethical conduct required of practitioners in the courts of the United States.

(b) *Grounds.* Disciplinary proceedings may be instituted against anyone who is practicing or has practiced before the Commission on grounds that such person has engaged in unethical or unprofessional conduct; has failed to comply with these rules or an order of the Commission or its Judges; has been disbarred or suspended by a court or administrative agency; or has been disciplined by a Judge under paragraph (e) of this section.

(c) Disciplinary proceedings shall be subject to the following procedure:

(1) *Disciplinary referral.* Except as provided in paragraph (e) of this section, a Judge or other person having knowledge of circumstances that may warrant disciplinary proceedings against an individual who is practicing or has practiced before the Commission shall forward to the Commission for action such information in the form of a written disciplinary referral. Whenever the Commission receives a disciplinary referral, the matter shall be assigned a docket number.

(2) *Inquiry by the Commission.* The Commission shall conduct an inquiry concerning a disciplinary referral and shall determine whether disciplinary proceedings are warranted. The Commission may require persons to submit affidavits setting forth their knowledge of relevant circumstances. If the Commission determines that disciplinary proceedings are not warranted, it shall issue an order terminating the referral.

(3) *Transmittal and hearing.* Whenever, as a result of its inquiry, the Commission, by a majority vote of the full Commission or a majority vote of a duly constituted panel of the Commission, determines that the circumstances warrant a hearing, the Commission's Chief Administrative Law Judge shall assign the matter to a Judge, other than the referring Judge, for hearing and decision. The Commission shall specify the disciplinary issues to be resolved through hearing and may designate counsel to prosecute the matter before the Judge. The Judge shall provide the opportunity for reply and hearing on the specific disciplinary matters at issue. The individual shall have the opportunity to present evidence and cross-examine witnesses. The Judge's decision shall include findings of fact and conclusions of law and either an order dismissing the proceedings or an appropriate disciplinary order, which may include reprimand, suspension, or disbarment from practice before the Commission.

(d) *Appeal from Judge's decision.* Any person adversely affected or aggrieved by the Judge's decision is entitled to review by the Commission. A person seeking such review shall file a notice of appeal with the Commission within 30 days after the issuance of the Judge's decision.

(e) *Misconduct before a Judge.* A Judge may order the removal of any person, including a representative of a party, who engages in disruptive conduct in the Judge's presence. If a representative is ordered removed, the Judge shall allow the party represented by the person a reasonable time to engage another representative. In all instances of removal of a person for disruptive conduct, the Judge shall place in the record a written statement on the matter. A party aggrieved by a Judge's order of removal may appeal by requesting interlocutory review pursuant to § 2700.76 or, alternatively, may assign the Judge's ruling as error in a petition for discretionary review.

§ 2700.81 Recusal and disqualification.

(a) *Recusal.* A Commissioner or a Judge may recuse himself from a proceeding whenever he deems such action appropriate.

(b) *Request to withdraw.* A party may request a Commissioner or a Judge to withdraw on grounds of personal bias or other disqualification. A party shall make such a request by promptly filing an affidavit setting forth in detail the matters alleged to constitute personal bias or other grounds for disqualification.

(c) *Procedure if Commissioner or Judge does not withdraw.* If, upon being requested to withdraw pursuant to paragraph (b) of this section, the Commissioner or the Judge does not withdraw from the proceeding, he shall so rule upon the record, stating the grounds for his ruling. If the Judge does not withdraw, he shall proceed with the hearing, or, if the hearing has been completed, he shall proceed with the issuance of his decision, unless the Commission stays the hearing or further proceedings upon the granting of a petition for interlocutory review of the Judge's decision not to withdraw.

§ 2700.82 Ex parte communications.

(a) For purposes of this section, the following definitions shall apply:

(1) *Ex parte communication* means an oral or written communication not on the public record concerning any matter or proceeding with respect to which reasonable prior notice to all parties has not been given. A status or informational request does not constitute an ex parte communication.

(2) *Status or informational request* means a request for a status report on any matter or proceeding or a request concerning filing requirements or other docket information.

(3) *Merits of a case,* which shall be broadly construed by the Commission, includes discussion of the factual or legal issues in a case or resolution of those issues.

(b) *Prohibited ex parte communication.* There shall be no ex parte communication with respect to the merits of a case not concluded, between the Commission, including any member, Judge, officer, or agent of the Commission who is employed in the decisional process, and any of the parties, intervenors, representatives, amici, or other interested persons.

(c) *Procedure in case of violation.* (1) In the event a prohibited ex parte communication occurs, the Commission or the Judge may make such orders or take such action to remedy the effect of the ex parte communication as circumstances require. Upon notice and hearing, the Commission may take disciplinary action against any person who knowingly and willfully makes or causes to be made a prohibited ex parte communication.

(2) A memorandum setting forth all ex parte communications, whether prohibited or not, shall be placed on the public record of the proceeding.

(d) *Inquiries.* Any inquiries concerning filing requirements, the status of cases before the Commission,

or docket information shall be directed to the Office of General Counsel or the Docket Office of the Federal Mine Safety and Health Review Commission, 1730 K Street, N.W., Sixth Floor, Washington, DC 20006–3867.

§ 2700.83 Authority to sign orders.

The Chairman or other designated Commissioner is authorized to sign on behalf of the Commissioners, orders disposing of the following procedural motions: motions for extensions of time, motions for permission to file briefs in excess of page limits, motions to accept late filed briefs, motions to consolidate, motions to expedite proceedings, motions for oral argument, and similar procedural motions. A person aggrieved by such an order may, within 10 days of the date of the order, file a motion requesting that the order be signed by the participating Commissioners.

§ 2700.84 Effective date.

These rules are effective on May 3, 1993 and apply to cases initiated after they take effect. They also apply to further proceedings in cases then pending, except to the extent that application of the rules would not be feasible, or would work injustice, in which event the former rules of procedure apply.

Dated: February 25, 1993.

Arlene Holen,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 93–4804 Filed 3–2–93; 8:45 am]

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AD97

Dependency and Income; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations which were published Tuesday, December 15, 1992 (57 FR 59296). The regulations were required to implement legislation regarding dependency income and estate.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

Correction of Publication

On page 59296, the effective date is corrected to read as follows:

EFFECTIVE DATES: The changes to §§ 3.261(a)(36), 3.262(u), 3.263(f), 3.272(p), and 3.275(g) are effective August 10, 1988, the effective date of section 105, Public Law 100–383. The changes to §§ 3.261(a)(14), 3.262(r), and 3.272(n) are effective September 29, 1988, the effective date of section 653, Public Law 100–456. The changes to §§ 3.261(a)(28), 3.262(t), and 3.272(d) are effective November 18, 1988, the effective date of section 1402, Public Law 100–687. The changes to §§ 3.261(a)(35), 3.262(s), 3.263(e), 3.272(o), and 3.275(f) are effective January 1, 1989, the effective date of Public Law 101–201. All other changes are effective January 14, 1993.

§ 3.261 [Corrected]

1. On page 59298, in § 3.261, in the table, paragraph (a)(35) is corrected by adding "(Pub. L. 101–201)" after "payments".

2. On page 59298, § 3.261, in the table, paragraph (b)(4) is corrected by adding "debts; expenses of last illness and burial." after the word "just".

3. On page 59298, § 3.216 at the end of the table, the authority citation is removed.

Dated: February 19, 1993.

Majorie M. Leandri,

Chief, Records, Reports, and Regulations Division.

[FR Doc. 93–4788 Filed 3–2–93; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–4562–4]

Georgia; Final Authorization of State's Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule; correction.

SUMMARY: This action corrects the list of authorities previously published in the **Federal Register** dated November 25, 1992, for final authority. Approval of Georgia's program revision for requirements promulgated between July 1, 1989, and June 30, 1990, became effective on January 25, 1993; however, two provisions were inadvertently omitted from the November 25, 1992, **Federal Register** document.

DATES: Final authorization for Georgia shall be effective retroactively to January 25, 1993, unless EPA publishes a **Federal Register** action withdrawing this immediate final rule. All comments on this correction must be received by close of business by March 18, 1993.

ADDRESSES: Comments should be directed to Leonard W. Nowak at the address listed below.

FOR FURTHER INFORMATION CONTACT: Leonard W. Nowak, Acting Chief, State Program Section, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 347–2234.

SUPPLEMENTARY INFORMATION: These provisions were made publicly available for review during the public comment period in the original application and are still available at Georgia Department of Natural Resources, 205 Butler Street, SE, Atlanta, Georgia 30034; U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30365. Public comments on the two omitted provisions will be received until the close of business March 18, 1993. If there are no adverse public comments, final authority for Georgia for these provisions will be effective retroactively to January 25, 1993.

In the immediate final rule published on November 25, 1992, at 57 FR 55466, insert the following entries in the table which begins on Page 55467.

Provision	FR reference	FR date	State authority
(67) Testing and Monitoring Activities	54 FR 40260	9/29/89	391–3–11–.02(1) 391–3–11–.07(1)
(68) Reportable Quantity Adjustment Methyl Bromide Production Wastes	54 FR 41402	10/6/89	391–3–11–.07(1)

Dated: February 1, 1993.

D. Guinyard,

Acting Regional Administrator.

[FR Doc. 93–4887 Filed 3–2–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 90–571; FCC 93–104]

Telecommunications Services for Hearing and Speech Disabled

AGENCY: Federal Communications Commission.

ACTION: Final rules; interpretation.

SUMMARY: On February 19, 1993, the Commission adopted an Order on Reconsideration (Reconsideration), Second Report and Order (Second R&O) and Further Notice of Proposed Rulemaking (Further NPRM) in CC Docket 90–571. The Reconsideration and Second R&O (collectively called Order) amend part 64 of the rules to establish shared-funding as the interstate cost recovery mechanism for telecommunications relay services (TRS). The effect of this action is to provide an effective cost recovery system for all carriers.

EFFECTIVE DATE: May 3, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Dubroof, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau, (202) 634–1808.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Reconsideration and Second R&O in the matter of Telecommunications Services for Persons with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (CC Docket 90–571, FCC 93–104, adopted February 19, 1993, and released February 25, 1993. The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., NW., Washington, DC, or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., NW., suite 140, Washington, DC 20037, phone (202) 857–3800.

Analysis of Proceeding

In its Report and Order and Request for Comments, adopted July 11, 1991 (56 FR 36729 August 1, 1991), the Commission adopted rules to implement the ADA. The rules require each common carrier providing telephone voice transmission services to provide TRS not later than July 26, 1993, throughout the area in which it offers services. Carriers may provide services individually, through designees, through a competitively selected vendor, or in concert with other carriers. The Commission also fashioned a comprehensive set of rules which set forth terminology and definitions of TRS, prescribe operational, technical, and functional minimum standards of all TRS providers, and delineate the state certification process. Specifically, the Commission's rules require that TRS shall be capable of handling any type of call normally provided by common carriers. The burden of proving the infeasibility of handling any type of call is on the carriers. The ADA and corresponding rules of the Commission are intended to ensure that interstate and intrastate TRS are available, to the extent possible and in the most efficient manner, to persons in the United States with hearing and speech disabilities.

With regard to confidentiality, the Commission's rules require that, consistent with the obligations of common carrier operators, TRS communications assistants (CAs) are prohibited from disclosing the content of any relayed conversation regardless of content.

Furthermore, the Commission, noting that the record was not adequate to determine a specific cost recovery mechanism, sought further comments containing specific proposals on interstate cost recovery.

In the Order adopted February 19, 1993, we clarify that satellite service providers operating as common carriers offering voice services to the public are subject to the TRS service provisions. Similarly, common carriers leasing satellite capacity for the provision of voice transmission services are subject to the provisions of the ADA. However, where satellite services are private network services which do not carry voice transmission services to the general public, these satellite services do not constitute telephone voice transmission services under the ADA. The Order also states that the functional equivalency standard mandated by the ADA requires that TRS be capable of handling any type of call normally provided by common carriers, including coin-sent paid calls. Petitioners' proposal to limit the billing alternatives of persons with hearing and speech disabilities does not satisfy the requirements of the ADA. Moreover, petitioners do not provide a cost benefit basis for finding that it is advisable to exclude coin-sent paid calls from TRS and thereby discourage the development of improved pay telephone technology. The Order affirms that while provision of enhanced services offered by common carriers is not required, carriers are obligated to handle all other basic telephone services. The Commission clarifies rule section 64.604(a)(2) with regard to the confidentiality provided under the ADA, the limited exemptions provided in section 705 of the Communications Act, and the preemption of conflicting state statutes in order to make this rule section more accurately reflect these obligations. With respect to liability, we continue to believe a CA *generally* would not be deemed to be knowingly involved in illegal use. The Commission amends the rule to reflect that there is an exception to the requirement to complete all calls where such completion would be inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes.

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, the Commission's final analysis in this Order on Reconsideration and Second Report and Order is as follows:

I. Need and Purpose of This Action

This *Order on Reconsideration* and *Second Report and Order* further amends the Commission's nules requiring that each common carrier engaged in interstate and/or intrastate telephone voice transmission services shall, no later than July 26, 1993, provide telecommunications relay services throughout the area in which it offers service. The rule amendments are required by the Americans with Disabilities Act of 1990, which, *inter alia*, adds Section 225 to the Communications Act of 1934, as amended, 47 U.S.C. Section 225. The rules are intended to ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to persons in the United States with speech and/or hearing disabilities.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were submitted in direct response to the Regulatory Flexibility Analysis in the Report and Order and Request for Comments.

III. Significant Alternatives Considered

The Report and Order and Request for Comments in this proceeding offered several proposals and requested comments as well as the views of

commenters on other possibilities. The Commission has considered all comments, and has adopted most of its proposals in addition to some alternatives recommended by commenters. The Commission considers its Order on Reconsideration and Second Report and Order to be the most reasonable course of action under the mandate of section 225 of the Communications Act, as amended.

Ordering Clauses

1. Accordingly, It is Ordered, That, pursuant to sections 1, 4(i), 4(j), 201–205, 225 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 225 and 403, Part 64 of the Commission's Rules and Regulations is amended as set forth below, effective May 3, 1993.

2. The petitions for reconsideration filed by Ameritech Operating Companies, Bell Atlantic Telephone Companies, Bell South Corporation, GTE Service Corporation, and NYNEX Telephone Companies are denied in part and granted in part.

List of Subjects in 47 CFR Part 64

Communications Common Carriers, Handicapped, Individuals with hearing and speech disabilities, Telecommunications relay services.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Change

Part 64 of the Commission's Rules and Regulations (chapter I of title 47 of the Code of Federal Regulations) is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows::

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 225 unless otherwise noted.

2. Section 64.604(a)(2) and (c)(4)(ii) are revised as follows:

§ 64.604 Mandatory minimum standards.

(a) * * *

(2) *Confidentiality and conversation content.* Except as authorized by section 705 of the Communications Act, 47 U.S.C. § 605, CAs are prohibited from disclosing the content of any relayed conversation regardless of content and from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law. CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay user specifically requests summarization.

* * * * *

(c) * * *

(4) * * *

(ii) *Cost recovery.* Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under section 64.605, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section.

[FR Doc. 93–4844 Filed 3–2–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 89–553; FCC No. 93–34]

Use of 200 Channels in 896–901/935–940 MHz Bands Allotted to the Specialized Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This docket adopts rules giving licensees with exclusive licenses above 800 MHz greater flexibility in the transmission of a station identifier, and ensuring that spectrum allocated to the Specialized Mobile Radio Service does not remain unused for extended periods. The proposals contained in this first report and order will provide for the continued development of SMR services. This first report and order was combined with a further notice of proposed rule making in this proceeding. A summary of and information on the further notice of proposed rule making is published elsewhere in this issue.

DATES: These regulations are effective April 2, 1993.

ADDRESSES: Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Sharkey, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's first report and order, PR Docket No. 89–553, FCC No. 93–34, adopted January 14, 1993, and released February 12, 1993. The full text of this first report and order is available for inspection during normal business hours in the FCC Dockets Branch, room 230, 1919 M St., NW. Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M St., NW., suite 140, Washington, DC, 20037, telephone (202) 857–3800. This first report and order imposes no paperwork burden on the public.

Summary of First Report and Order

1. In this *First Report and Order* the Commission adopts rules which state that stations operating on either 800 MHz or 900 MHz channels, licensed on an exclusive basis, that normally employ digital signals for the transmission of data, text, control codes, or digitized voice may transmit a station identifier by digital transmission of the call sign. Additionally, the Commission modifies its rules so that an SMR license will cancel automatically if the licensee discontinues operation for a period in excess of 60 consecutive days and fails to file written justification with the FCC. Finally, the Commission declined to make fixed operations co-primary with mobile operations in the 896–901/935–940 MHz bands, noting that, because these channels are authorized on an exclusive basis, licensees will be able to provide fixed services on a secondary basis.

Final Regulatory Flexibility Analysis

2. Need and Purpose of This Action

These changes to Part 90 of the Commission's Rules will enhance use of channels allocated to the SMR service. The amended rules will allow licensees more operational flexibility and will ensure that the spectrum is being used.

3. Summary of Issues Raised By the Public Comments in Response to the Initial Regulatory Flexibility Analysis

The Initial Regulatory Flexibility Analysis stated that we anticipate that many small and large entities will be positively affected by this action because additional communications options would be made available to them. The number of small entities that will be affected is unknown. We did not receive any comments that specifically addressed our Initial Regulatory Flexibility Analysis.

4. Significant Alternatives Considered and Rejected

All significant alternatives have been addressed in this first report and order. This item is intended to minimize the regulatory burdens to our licensees, many of whom may be considered small business entities.

List of Subjects in 47 CFR Part 90

Business and industry, Communications equipment, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amendatory Text

Part 90 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332.

2. Section 90.631 is amended by revising paragraph (f) to read as follows:

§ 90.631 Trunked system loading, construction and authorization requirements.

* * * * *

(f) If a station is not placed in permanent operation, in accordance with the technical parameters of the station authorization, within one year, except as provided in § 90.629, its license cancels automatically and must be returned to the Commission. For purposes of this section, a base station is not considered to be placed in operation unless at least two associated mobile stations, or one control station and one mobile station, are also placed in operation. An SMR licensee with facilities that have discontinued operations for a period in excess of sixty (60) consecutive days is presumed to have permanently discontinued operations, with the underlying license(s) subject to automatic cancellation unless the licensee provides the Commission with written justification of such a planned discontinuance of operations. Such justification must be received by the Commission 30 days before the expiration of the 60-day period and must include the reason for discontinuance and the anticipated duration of the discontinuance. The Commission may reject the licensee's justification and if so, the licensed facility must resume operations within 5 days of receipt of the Commission's rejection notification or by the sixtieth day from the date the station ceased operating, whichever is later. Failure to resume operations within this time will render the underlying license(s) subject to automatic cancellation.

* * * * *

3. Section 90.647 is amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

§ 90.647 Station identification.

* * * * *

(b) Trunked systems of communication, except as noted in paragraph (c) of this Section, shall be identified through the use of an automatic device which transmits the call sign of the base station facility at 30 minute intervals. Such station identification shall be made on the lowest frequency in the base station trunk group assigned the licensee. Should this frequency be in use at the time station identification is required, such identification may be made at the termination of the communication in progress on this frequency. Identification may be made by voice or International Morse Code. When the call sign is transmitted in International Morse Code, it must be at a rate of between 15 to 20 words per minute and by means of tone modulation of the transmitter, the tone frequency being between 800 and 1000 hertz.

(c) Stations operating in either the 806–824/851–869 MHz or 896–901/935–940 MHz bands that are licensed on an exclusive basis, and normally employ digital signals for the transmission of data, text, control codes, or digitized voice may also be identified by digital transmission of the call sign. A licensee that identifies its station in this manner must provide the Commission, upon its request, information sufficient to decode the digital transmission and ascertain the call sign transmitted.

[FR Doc. 93–4284 Filed 3–2–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 91–72; FCC 93–32]

Creation of the Emergency Medical Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted rules that create the Emergency Medical Radio Service. This action was taken to redress the adverse consequences on public health and safety resulting from current crowding on emergency medical channels. The rule changes will establish a discrete radio service category dedicated strictly to eligibles providing basic or advanced life support services on an ongoing basis and thereby ensure the reliability of emergency medical communications.

EFFECTIVE DATE: April 2, 1993.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Rules Branch, Private Radio Bureau, (202) 632–7125.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 91–72, FCC 93–32, adopted January 14, 1993, and released February 12, 1993. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, telephone (202) 857–3800.

This Report and Order imposes no paperwork burden on the public.

Summary of Report and Order

1. In this Report and Order, we establish the Emergency Medical Radio Service (EMRS) as a new Public Safety Radio Service under subpart B of part 90 of our Rules. A discrete radio service category dedicated solely to transmissions related to life support will help to enhance the reliability of emergency medical communications. Further, by placing the EMRS in Subpart B, its licensees will have access to 19 UHF frequency pairs on a shared basis with other Public Safety Radio Service licensees.

2. Eligibility in the EMRS will be limited to persons or entities that provide basic or advanced life support services on an ongoing basis for the transmission of communications essential to the delivery of emergency medical services. Further, we will permit EMRS applicants to maintain eligibility in Special Emergency Radio Service (SERS) because EMRS licensees need continued access to SERS channels in order to interface with other entities using SERS channels and to conduct necessary non-emergency communications.

3. We are assigning certain frequencies, primarily from the SERS, to the EMRS. We conclude that the SERS spectrum, currently limited primarily for emergency medical communications, is the most appropriate source of spectrum for the EMRS. Thus, we are reassigning to this new service category the ten paired UHF channels in the 460

MHz range known as the MED channels, and five VHF simplex frequencies in the 155 MHz range. Because of the EMRS eligibility criteria, we are removing certain restrictions currently applicable to these frequencies. Additionally, we are prohibiting interservice sharing on these channels. We also are reassigning SERS frequencies in the 453 and 458 MHz band to the EMRS, and where justified, will accommodate medical paging systems currently operating on these channels.

4. Finally, we are reassigning to the EMRS two low power SERS frequencies in the 150 MHz range for full power use, two frequency pairs in the 460 MHz and 465 MHz band, and five pairs of 220 MHz narrowband frequencies.

5. On May 24, 1991, the Private Radio Bureau imposed a freeze on acceptance of applications for the 220–222 MHz band (Order, DA 91–647, 56 FR 25639, June 5, 1991). All 200 MHz frequencies, including Channels 181 through 185 being assigned to the EMRS, remain subject to the Bureau's freeze Order. At such time as we begin accepting applications for the 220–222 MHz band, EMRS eligibles may apply to operate on Channels 181 through 185.

6. We also designate IMSA/IAFC as the certified coordinator for the EMRS.

Final Regulatory Flexibility Analysis

7. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

Need and Purpose of the Action

8. By establishing a discrete Emergency Medical Radio Service, the Commission will improve the quality and reliability of EMS communications. This action will help alleviate the congestion and interference currently hampering EMS communications by restricting use of the relevant channels and assigning additional spectrum for emergency medical communications.

Issues Raised in Response to the Initial Regulatory Flexibility Analysis

9. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

Significant Alternatives Considered and Rejected

10. All significant alternatives have been addressed in this Order.

List of Subjects in 47 CFR Part 90

Emergency medical services, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amendatory Text

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.27 is added to subpart B to read as follows:

§ 90.27 Emergency Medical Radio Service.

(a) *Eligibility.* Persons or entities engaged in the provision of basic or advanced life support services on an ongoing basis are eligible to hold authorizations in the Emergency Medical Radio Service to operate stations for transmission of communications essential for the delivery or rendition of emergency medical services for the provision of basic or advanced life support. Applications submitted by persons or organizations other than governmental entities must be accompanied by a statement prepared by the governmental body having jurisdiction over the state's emergency medical service plans indicating that the applicant is included in the state's emergency plan or otherwise supporting the application.

(b) *Frequencies available.* The following table indicates frequencies available for assignment to stations in the Emergency Medical Radio Service, together with the class of station(s) to which they are normally assigned and the specific assignment limitations explained in paragraph (c) of this section. (Frequencies below 450 MHz indicated for base or mobile stations may be authorized to fixed stations on a secondary basis to stations in the mobile service):

EMERGENCY MEDICAL RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Megahertz:		
72.00 to 76.00.	Operational-fixed	1
150–170	Base or mobile	2
150.775	Mobile	
150.790	do	
155.325	Base or mobile	3, 4
155.340	do	4, 5
155.355	do	3, 4
155.365	do	3, 4
155.400	do	3, 4

EMERGENCY MEDICAL RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
169–172	Mobile	6
220.9025	Base	25
220.9075	do	25
220.9125	do	25
220.9175	do	25
220.9225	do	25
221.9025	Mobile	25
221.9075	do	25
221.9125	do	25
221.9175	do	25
221.9225	do	25
450 to 470	Fixed	7
453.025	Base	9, 19, 22, 26
453.050	Base or mobile	8
453.075	Base	9, 19, 22, 26
453.100	Base or mobile	8
453.125	Base	9, 19, 22, 26
453.150	Base or mobile	8
453.175	Base	9, 19, 22, 26
453.200	Base or mobile	8
453.250	do	8
453.300	do	8
453.350	do	8
453.400	do	8
453.450	do	8
453.500	do	8
453.550	do	8
453.600	do	8
453.650	do	8
453.700	do	8
453.750	do	8
453.800	do	8
453.850	do	8
453.900	do	8
453.950	do	8
458.025	Mobile	9, 22, 26
458.050	do	8
458.075	do	9, 22, 26
458.100	do	8
458.125	do	9, 22, 26
458.150	do	8
458.175	do	9, 22, 26
458.200	do	8
458.250	do	8
458.300	do	8
458.350	do	8
458.400	do	8
458.450	do	8
458.500	do	8
458.550	do	8
458.600	do	8
458.650	do	8
458.700	do	8
458.750	do	8
458.800	do	8
458.850	do	8
458.900	do	8
458.950	do	8
460.525	Base or Mobile	10
460.550	do	10
462.950	do	3, 11, 12
462.975	do	3, 11, 12
463.000	do	9, 13, 20
463.025	do	9, 13, 20
463.050	do	9, 13, 20
463.075	do	9, 13, 21
463.100	do	9, 13, 21
463.125	do	9, 13, 21
463.150	do	9, 13, 21
463.175	do	9, 13, 21
465.525	Mobile	10
465.550	do	10
467.950	do	3, 11, 12
467.975	do	3, 11, 12
468.000	do	9, 13, 20

EMERGENCY MEDICAL RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
468.025	do	9, 13, 20
468.050	do	9, 13, 20
468.075	do	9, 13, 21
468.100	do	9, 13, 21
468.125	do	9, 13, 21
468.150	do	9, 13, 21
468.175	do	9, 13, 21
470 to 512	Base or Mobile	14
806 to 824	Mobile	15
851 to 869	Base or Mobile	15
928 and above.	Operational-fixed	16
929 to 930	Base only	24
1427 to 1435	Operational-fixed base or mobile.	17
2450 to 2500	Base or Mobile	18
10,550 to 10,680.	do	23

(c) Explanation of assignment limitations appearing in the frequency table of paragraph (b) of this section:

(1) The frequencies available for use at operational-fixed stations in the band 72–76 MHz are listed in § 90.257(a)(1). These frequencies are shared with other services and are available only in accordance with the provisions of § 90.257.

(2) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

(3) A licensee regularly conducting two-way communications operations on this frequency may, on a secondary basis, also transmit one-way alert-paging signals to ambulance and rescue squad personnel.

(4) In addition to other authorized uses, the use of F1B, F1D, F2B or F2D emission is permitted on this frequency for the operation of biomedical telemetry systems except in the following geographic locations:

(i) New York, N.Y.-Northeastern New Jersey; Los Angeles-Long Beach, Calif.; Chicago, Ill.-Northwestern Indiana; Philadelphia, Pa.-N.J.; Detroit, Mich.; San Francisco-Oakland, Calif.; Boston, Mass.; Washington, D.C.-Md.-Va.; Cleveland, Ohio; St. Louis, Mo.-Ill.; Pittsburgh, Pa.; Minneapolis-St. Paul, Minn.; Houston, Tex.; Baltimore, Md.; Dallas, Tex.; Milwaukee, Wis.; Seattle-Everett, Wash.; Miami, Fla.; San Diego, Calif.; Atlanta, Ga.; Cincinnati, Ohio-Ky.; Kansas City, Mo.-Kans.; Buffalo, N.Y.; Denver, Colo.; San Jose, Calif.; New Orleans, La.; Phoenix, Ariz.; Portland, Oreg.-Wash.; Indianapolis, Ind.; Providence-Pawtucket-Warwick, R.I.-Mass.; Columbus, Ohio; San Antonio, Tex.; Louisville, Ky.-Ind.; Dayton, Ohio; Forth Worth, Tex.; Norfolk-Portsmouth, Va.; Memphis, Tenn.-Miss.; Sacramento, Calif.; Fort Lauderdale-Hollywood, Fla.; Rochester, N.Y.; Tampa-St. Petersburg, Fla.

(ii) The continuous carrier mode of operation may be used for telemetry transmissions on this frequency for periods up to two-minutes duration; following which there must be a break in the carrier for at least a one-minute period.

(iii) Geographical coordinates for the above-listed urbanized areas may be found at Table 1 of § 90.635.

(5) This frequency may be designated by common consent as an intersystem mutual assistance frequency under an area-wide medical communications plan.

(6) Frequencies in this band will be assigned for low power wireless microphones in accordance with the provisions of § 90.265.

(7) The frequencies available for use at fixed stations in this band and the requirements for assignment are set forth in § 90.261. Operation on these frequencies is secondary to stations in the Industrial and Land Transportation Radio Service where they are assigned for land mobile operations.

(8) This frequency is available in this service on a shared basis with all other Public-Safety Radio Services.

(9) The continuous carrier mode of operation may be used for telemetry transmission on this frequency.

(10) This frequency is shared with the Police and Fire Radio Services. This frequency may be designated by common consent for intra-system and inter-system mutual assistance purposes and is subject to the coordination requirements specified in § 90.175.

(11) This frequency is primarily authorized for use in the dispatch of medical care vehicles and personnel for the rendition or delivery of medical services. This frequency may also be assigned for intra-system and inter-system mutual assistance purposes. For uniformity in usage, the frequency pairs 462.950/467.950 and 462.975/467.975 MHz may be referred to as MED–9 and MED–10, respectively.

(12) This frequency is shared with Police Radio Service licensees authorized prior to April 16, 1976. This frequency is available on a primary basis to operations by licensees in the Emergency Medical Radio Service.

(13) For applications for new radio systems received after August 15, 1974, the eight frequency pairs listed below will be assigned in a block for shared operation under § 90.27(a) subject to the following:

(i) For uniformity in usage, these frequency pairs may be referred to by channel name as follows:

Frequencies base and mobile (Megahertz)	Mobile only (MHz)	Channel name
463.000	468.000	MED–1
463.025	468.025	MED–2
463.050	468.050	MED–3
463.075	468.075	MED–4
463.100	468.100	MED–5
463.125	468.125	MED–6
463.150	468.150	MED–7
463.175	468.175	MED–8

(ii) Except as provided in paragraphs (c)(13)(iii) and (iv) of this section, mobile or portable stations must employ equipment that is both wired and equipped to transmit/receive, respectively, on each of these eight frequency pairs with transmitters operated on the 468 MHz frequencies.

(iii) Portable (hand-held) units operated with a maximum output power of 2.5 watts are exempted from the multi-channel equipment requirements specified in paragraph (c)(13)(ii) in this section.

(iv) Stations located in areas above line A, as defined in § 90.7 will be required to meet multi-channel equipment requirements only for those frequencies up to the number specified in paragraph (c)(13)(ii) of this section that have been assigned and coordinated with Canada in accordance with the applicable U.S.-Canada agreement.

(14) Subpart L contains rules for assignment of frequencies in the 470–512 MHz band.

(15) Subpart S contains rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

(16) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by part 94 of this Chapter.

(17) This frequency band is available in this service subject to the provisions of § 90.259.

(18) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modifications to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radio-determination Satellite Service.

(19) Paging licensees as of March 20, 1991, may continue to operate on a primary basis until January 14, 1998.

(20) This frequency is authorized for use only for operations in biomedical telemetry stations. F1B, F1D, F2B, F2D, F3E, G1B, G1D, G2B, G2D and G3E emissions may be authorized. Entities

eligible in this Radio Service may use this frequency on a secondary basis for any other permissible communications consistent with § 90.27(a).

(21) This frequency is authorized only for communications between medical facilities vehicles and personnel related to medical supervision and instruction for the treatment and transport of patients in the rendition or delivery of medical services. F1B, F1D, F2B, F2D, G1B, G1D, G2B, F3E and G3E emissions are authorized. Entities eligible in this Radio Service may use this frequency on a secondary basis for any other permissible communications consistent with § 90.27(a).

(22) Local government highway radio call box operations first licensed prior to 3/31/80 on this frequency may continue to operate in accordance with § 90.17(c)(11).

(23) This band is available for Digital Termination Systems and for associated internodal links under part 94 of this Chapter. No new licenses will be issued under this subpart but current licenses will be renewed.

(24) Frequencies in this band are available only for one-way paging operations in accordance with § 90.494.

(25) Rules concerning the use of this frequency are set forth in subpart T.

(26) This frequency is also authorized for use for operations in biomedical telemetry stations. FIB, FID, F2B, F2D, F3E, G1B, G1D, G2B, G2D, and G3E emissions may be authorized for bio-medical transmissions.

3. Section 90.53 is amended by revising paragraphs (a) and (b) to read as follows:

§ 90.53 Frequencies available.

(a) The following table indicates frequencies available for assignment to stations in the Special Emergency Radio Service, together with the class of station(s) to which they are normally assigned and the specific assignment limitations which are explained in paragraph (b) of this section. (Frequencies below 450 MHz indicated for base or mobile stations may be authorized to fixed stations on a secondary basis to stations in the mobile service):

SPECIAL EMERGENCY RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Kilohertz:		
2000–3000	Fixed	1
2726	Base or mobile	2
3201	do	
Megahertz:		
33.02	do	3, 25
33.04	do	25

SPECIAL EMERGENCY RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
33.06	do	3, 25
33.08	do	25
33.10	do	3, 25
35.02	Mobile	27
35.64	Base	4
35.68	do	4
37.90	Base or mobile	3, 25
37.94	do	3, 25
37.98	do	3, 25
43.64	Base	4, 28
43.68	do	4
45.92	Base or mobile	25
45.96	do	25
46.00	do	25
46.04	do	25
47.42	do	5, 25
47.46	do	25
47.50	do	25
47.54	do	25
47.58	do	25
47.62	do	25
47.66	do	25
72.00 to 76.00.	Operatonal fixed	6
150–170	Base or mobile	30
152.0075	Base	4, 31
155.160	Base or mobile	25
155.175	do	25
155.205	do	25
155.220	do	25
155.235	do	25
155.265	do	25
155.280	do	25
155.295	do	25
157.450	Base	4, 11
163.250	do	4
169–172	Mobile	33
450–470	Fixed	12
453.025	Base	26
453.075	do	26
453.125	do	26
453.175	do	26
806 to 824	Mobile	21
851 to 869	Base or mobile	21
928 and above.	Operational-fixed	22
929 to 930	Base only	7
1427 to 1435	Operational-fixed, base or mobile.	23
2450 to 2500	Base or mobile	24
10,550 to 10,680.	do	9

(b) Explanation of assignment limitations appearing in the frequency table of paragraph (a) of this section:

(1) Appropriate frequencies in the band 2000–3000 kHz which are designated in part 80 of this chapter as available to Public Ship Stations for telephone communications with Public Coast Stations may be assigned on a secondary basis to Special Emergency fixed Stations for communication with Public Coast Stations only, provided such stations are located in the United States and the following conditions are met:

(i) That such fixed station is established pursuant to the eligibility provisions of § 90.47 and that the isolated area involved is an island or other location not more than 480 km (300 statute miles) removed from the desired point of communication and isolated from that point by water.

(ii) That evidence is submitted showing that an arrangement has been made with the coast station licensee for the handling of emergency communications permitted by § 80.453 and § 90.47(d) of this chapter.

(iii) That operation of the Special Emergency fixed station shall at no time conflict with any provision of Part 80 of this chapter and further, that such operation in general shall conform to the practices employed by Public Ship Stations for radiotelephone communication with the same Public Coast Station.

(2) This frequency is shared with the Local Government Radio Service where it is available for State Guard operations.

(3) This frequency is shared with the Highway Maintenance Radio Service.

(4) This frequency will be assigned only for one-way paging communications to mobile receivers. Transmissions for the purpose of activating or controlling remote objects on this frequency are not authorized.

(5) Thus frequency is reserved for assignment only to national organizations eligible for disaster relief operations under § 90.41.

(6) The frequencies available for use at operational-fixed stations in the band 72–76 MHz are listed in § 90.257(a)(1). These frequencies are shared with other services and are available only in accordance with the provisions of § 90.257.

(7) Frequencies in this band are available only for one-way paging operations in accordance with § 90.494.

(8) [Reserved]

(9) The frequencies in the band 10.55–10.68 GHz are available for Digital Termination Systems and for associated intermodal links in the Point-to-Point Microwave Radio Service. No new licenses will be issued under this subpart but current licenses will be renewed.

(10) [Reserved]

(11) Operations on this frequency are limited to 30 watts transmitter output power.

(12) The requirements for secondary fixed use of frequencies in this band are set forth in § 90.261.

(13) [Reserved]

(14) [Reserved]

(15) [Reserved]

(16) [Reserved]

(17) [Reserved]

(18) [Reserved]

(19) [Reserved]

(20) [Reserved]

(21) Subpart S contains rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

(22) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by part 94 of this chapter.

(23) This frequency band is available in this service subject to the provisions of § 90.259.

(24) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modification to the existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

(25) A licensee regularly conducting two-way communication operations on this frequency may, on a secondary basis, also transmit one-way alert-paging signals to ambulance and rescue squad personnel.

(26) Paging licensees as of March 20, 1991, may continue to operate on a primary basis until January 14, 1998.

(27) This frequency is available in this service only to persons eligible under the provisions of § 90.38(a) for operation of transmitters having a maximum power output of three watts using A1A, A1D, A2B, A2D, F1B, F1D, F2B, F2D, G1B, G1D, G2B, or G2D emission. This frequency is also available in the Business Radio Service on a co-equal basis with the Special Emergency Radio Service users.

(28) No new licenses will be granted for one-way paging under § 90.487 for use on this frequency after August 1, 1980. This frequency is available to persons eligible for station licenses under the provisions of § 90.38(a) on a co-equal basis with one-way paging users under § 90.487 prior to August 1, 1985, and on a primary basis after August 1, 1985. Only A1A, A1D, A2B, A2D, F1B, F1D, F2B, F2D, G1B, G1D, G2B, G2D emissions and power not exceeding 10 watts will be authorized. Antennas having gain greater than 0 dBd will not be authorized. Transmissions shall not exceed two seconds duration.

(29) [Reserved]

(30) Rules concerning the use of this and for narrowband operations are set forth in § 90.271.

(31) This frequency is removed by 22.5 kHz from frequencies assigned to other radio services. Utilization of this frequency may result in, as well as be subject to, interference under certain operating conditions. In considering the use of this frequency, adjacent channel operations should be taken into consideration. If interference occurs, the licensee may be required to take the necessary steps to resolve the problem. See § 90.173(b).

(32) [Reserved]

(33) Frequencies in this band will be assigned for low power wireless microphones in accordance with provisions of § 90.265.

(34) [Reserved]

* * * * *

4. Section 90.55 is amended by revising the first sentence of the introductory text to read as follows:

§ 90.55 Paging operations.

Paging operations may be authorized in this service only on frequencies assigned under the provisions of §§ 90.53(b)(4), (7), (25) and (26).* * *

* * * * *

5. Section 90.176 is amended by revising paragraph (a) and (b), redesignating paragraph (c) as (d), and adding a new paragraph (c) to read as follows:

§ 90.176 Interservice sharing of frequencies in the 150–174 and 450–470 MHz bands.

(a) Entities eligible in the Public Safety Radio Services governed by this rule part may apply to use any of the 150–174 and 450–470 MHz frequencies allocated to these services. Applicants are required to make the showing set forth in paragraph (c) of this section.

(b) Entities eligible in the Special Emergency Radio Service or the Industrial and Land Transportation Radio Services governed by this rule part may apply to use any of the above-mentioned frequencies allocated to these services. Applicants are required to make the showing set forth in paragraph (c) of this section.

(c) Applications for frequencies available under this rule must be accompanied by:

(1) A determination by the applicable frequency coordinator that there are no satisfactory frequencies available within the applicant's own radio service in the area of desired operation;

(2) A demonstration that the frequency(ies) requested in another radio service are not assigned in that radio service in the area of desired operation;

(3) A statement from the frequency coordinator having responsibility for coordination in the radio service or group in which the frequency is assigned concurring in its assignment in the manner requested. In cases where concurrence is not given, the coordinator must provide an explanation why the requested sharing is inappropriate;

(4) A statement or showing that the proposed use of the assignment will not violate any of the technical limitations applicable in the service or services to which the frequency is regularly allocated.

* * * * *

§ 90.311 [Amended]

6. Section 90.311(a) is amended by revising the table column heading under "Public Safety Pool" to list the radio services as follows:

* * * * *

Fire, Police, Local Government, Highway Maintenance, Forestry Conservation and Emergency Medical Radio Services.

* * * * *

7. Section 90.555 is amended by revising the list of letter symbols under Public Safety Services in the table in paragraph (a), and revising the entries for frequencies 150.775 MHz, 150.790 MHz, 155.325 MHz through 155.355 MHz, 155.385 MHz, 155.400 MHz, 453.025 through 453.200 MHz, 453.250 MHz, 453.300 MHz, 453.350 MHz, 453.400 MHz, 453.450 MHz, 453.500 MHz, 453.550 MHz, 453.600 MHz, 453.650 MHz, 453.700 MHz, 453.750 MHz, 453.800 MHz, 453.850 MHz, 453.900 MHz, 453.950 MHz, 458.025 MHz through 458.200 MHz, 458.250 MHz, 458.300 MHz, 458.350 MHz, 458.400 MHz, 458.450 MHz, 458.500 MHz, 458.550 MHz, 458.600 MHz, 458.650 MHz, 458.700 MHz, 458.750 MHz, 458.800 MHz, 458.850 MHz, 458.900 MHz, 458.950 MHz, 460.525 MHz, 460.550 MHz, 462.950 MHz through 463.175 MHz, 465.525 MHz, 465.550 MHz, 467.950 MHz through 468.175 MHz in paragraph (b) to read as follows:

§ 90.555 Combined frequency listing.

(a) * * *

Public Safety Services

PF—Fire.
PH—Highway maintenance.
PL—Local government.
PO—Forestry-conservation.
PP—Police.
PS—Special Emergency.
PM—Emergency Medical.

(b) Combined frequency list.

Frequency	Services	Special limitations
* *	* *	*
150.775	PM	Mobile.
150.790	PM	Do.
* *	* *	*
155.325	PM	Do.
155.340	PM	Do.

Frequency	Services	Special limitations
155.355	PM	Do.
* * *	* * *	*
155.385	PM	Do.
155.400	PM	Do.
* * *	* * *	*
453.025	PM	Do.
453.050	PL, PP, FP, PH, PO, PM.	Do.
453.075	PM	Do.
453.100	PL, PP, PF, PH, PO, PM.	Do.
453.125	PM	Do.
453.150	PL, PP, PF, PH, PO, PM.	Do.
453.175	PM	Do.
453.200	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
453.250	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
453.300	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
453.350	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
453.400	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
453.450	PL, PP, PF, PH, PO, PM.	Do.
453.500	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
453.550	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
453.600	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
453.650	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
453.700	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
453.750	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
453.800	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
453.850	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
453.900	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
453.950	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
458.025	PM	Do.
458.050	PL, PP, PF, PH, PO, PM.	Do.
458.075	PM	Do.
458.100	PL, PP, PF, PH, PO, PM.	Do.
458.125	PM	Do.
458.150	PL, PP, PF, PH, PO, PM.	Do.
458.175	PM	Do.
458.200	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
458.250	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
458.300	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
458.350	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
458.400	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
458.450	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
458.500	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
458.550	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
458.600	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
458.650	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
458.700	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
458.750	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
458.800	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
458.850	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
458.900	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
458.950	PL, PP, PF, PH, PO, PM.	Do.
* * *	* * *	*
460.525	PP, PF, PM	Do.
460.550	PP, PF, PM	Do.
* * *	* * *	*
462.950	PM	Med 9.
462.975	PM	Med 10.
463.000	PM	Med 1.
463.025	PM	Med 2.
463.050	PM	Med 3.
463.075	PM	Med 4.
463.100	PM	Med 5.
463.125	PM	Med 6.
463.150	PM	Med 7.
463.175	PM	Med 8.
* * *	* * *	*
465.525	PP, PF, PM	Do.
465.550	PP, PF, PM	Do
* * *	* * *	*
467.950	PM	Med 9.
467.975	PM	Med 10.
468.000	PM	Med 1.
468.025	PM	Med 2.
468.050	PM	Med 3.
468.075	PM	Med 4.
468.100	PM	Med 5.
468.125	PM	Med 6.
468.150	PM	Med 7.
468.175	PM	Med 8.
* * *	* * *	*

8. Section 90.719 is revised to read as follows:

§ 90.719 Individual channels available for assignment in the 220–222 MHz band.

Channels 171–200 are available to both Government and non-Government applicants, and may be assigned singly or in contiguous channel groups. Channels 171–180 are available for any use consistent with this subpart. Channels 181–185 are set aside for Emergency Medical Radio Service use under subpart B. Channels 186–200 are set aside for data only operations until March 31, 2000. The term "data", for purposes of this subpart, includes the transmission of text, control codes, and other information typical of machine-to-machine communications. Digitized voice signals are considered data signals under this subpart.

[FR Doc. 93–4841 Filed 3–2–93; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. HM–181; Amendment No. 171–111]

RIN 2137–AA01

Infectious Substances; Extension of Compliance Date

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; extension of compliance date.

SUMMARY: RSPA has received two petitions for reconsideration, and a number of comments concerning provisions for infectious substances adopted in a final rule. In this document, RSPA is extending a compliance date applicable to infectious substances from April 1, 1993, to January 1, 1994, in order to provide additional time to consider the issues. Elsewhere in today's **Federal Register**, RSPA has published an advance notice of proposed rulemaking and announced a public hearing concerning these issues.

EFFECTIVE DATE: This amendment is effective on March 3, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Martin, or Ms. Jennifer Posten, Office of Hazardous Materials Standards, Research and Special Programs Administration, 400 Seventh St., SW., Washington, DC 20590–0001, telephone: (202) 366–4488.

SUPPLEMENTARY INFORMATION: On December 21, 1990, RSPA issued a final rule under Docket HM–181 (55 FR 52402) which comprehensively revised the Hazardous Materials Regulations (HMR) with respect to hazard communication, classification, and packaging requirements. A document making editorial and substantive revisions to the December 1990 final rule was published on December 20, 1991 (56 FR 66124). The revisions contained in the latter document were primarily in response to over 250 petitions for reconsideration received on the December 21, 1990 final rule.

Following issuance of the December 1991 rule, RSPA received two additional petitions for reconsideration and numerous comments and requests for clarification concerning provisions of the final rule applicable to infectious substances and regulated medical waste. On October 1, 1992 (57 FR 45442), 49 CFR 171.14(b) was revised to establish a compliance date of April 1, 1993, rather than October 1, 1992, for new requirements applicable to infectious substances. Elsewhere in today's **Federal Register**, RSPA has published an advance notice of proposed rulemaking (ANPRM) and announced a public hearing concerning the need for additional regulatory changes pertaining to infectious substances. In order to provide time for evaluation of comments to the ANPRM and to develop additional rulemaking documents, if warranted, RSPA is revising 49 CFR 171.14 to extend the compliance date applicable to infectious substances from April 1, 1993, to January 1, 1994.

The reader should note that § 171.14 was revised on October 1, 1992 (57 FR 45442) by redesignating paragraphs (b)(3), (b)(4) and (b)(5) as paragraphs (b)(4), (b)(5) and (b)(6), respectively, and by adding a new paragraph (b)(3) which applied the April 1, 1993 compliance date to infectious substances. In this document, paragraph (b)(3) is removed to delete reference to the April 1, 1993 date and paragraphs b(5) and b(6) are redesignated as b(6) and b(7), respectively. A new paragraph b(5) is added to make the classification, hazard communication, and packaging requirements adopted under Docket HM–181 applicable to infectious substances effective January 1, 1994.

During the transition period provided in § 171.14, a person may comply with either the applicable "old" requirements of the HMR (i.e., those which were in effect on September 30, 1991) or the current requirements adopted under HM–181. If a material is an etiologic agent under the old regulations and does not meet any of the old exceptions, it must conform to either the old requirements (i.e., must be described, labeled and packaged as an "etiologic agent") or the current requirements of the HMR for "infectious substances". (Notice that Section 171.14(c)(3) provides for limited intermixing of old and new requirements). If a material meets the new "infectious substance" definition but not the old "etiologic agent" definition, it may be shipped in accordance with the new requirements, but compliance is not mandatory until January 1, 1994.

Because the amendments adopted herein extend the compliance date of certain regulations, and impose no new regulatory burden on any person, notice and public procedure are unnecessary. For these same reasons, these amendments are being made effective without the usual 30-day delay following publication.

Rulemaking Analyses and Notices

Executive Order 12291

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. Although the December 20, 1991 final rule was significant under the regulatory procedures of the Department of Transportation (44 FR 11034),this document is not significant because it does not impose additional requirements and has the effect of extending a compliance date. A regulatory evaluation for the December 20, 1991 final rule is available for review in the docket.

Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 on Federalism. It has no substantial direct effect on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among levels of government. Therefore, no Federalism Assessment is required.

Regulatory Flexibility Act

Based on information concerning the size and nature of entities likely to be affected by this rule, I certify 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.

Paperwork Reduction Act

This amendment does not impose information collection or recordkeeping requirements.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 171 is amended as set forth below:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1818; 49 CFR Part 1.

2. In Section 171.14, paragraph (b)(3) is removed and reserved, paragraphs (b)(5) and (b)(6) are redesignated as paragraphs (b)(6) and (b)(7), respectively, and a new paragraph (b)(5) is added to read as follows:

§ 171.14 Transitional provisions for implementing requirements based on the UN Recommendations.

* * * * *

(b) * * *

(3) (Reserved.

(4) * * *

(5) *January 1, 1994.* On January 1, 1994, all applicable regulatory requirements, including those pertaining to classification, (see § 173.134 of this subchapter), hazard communication, and packaging for Division 6.2 materials (infectious substances, including regulated medical waste) are effective.

* * * * *

Issued in Washington, DC on February 26, 1993. under authority delegated in 49 CFR part 1.

Rose A. McMurray,

Acting Administrator.

[FR Doc. 93–4881 Filed 3–2–93; 8:45 am]

BILLING CODE 4910–60–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92–33; Notice 2]

RIN 2127—AE36

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Final rule.

SUMMARY: This notice adopts identification markings for lenses on round sealed beam headlamps that

would be an alternative to those markings presently required. This will allow manufacture of replacement headlamps for old cars that replicate the appearance of the original headlamps. The notice also transfers some existing requirements for replacement equipment from S5.1, the section on new vehicle equipment, to S5.8, the section on replacement equipment. Finally, the notice deletes the footnotes and associated references from the Tables.

DATES: The effective date for the final rule is April 2, 1993.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking, (202–366–6346).

SUPPLEMENTARY INFORMATION: This rulemaking action affects only the marking of lenses of replacement equipment headlamps of 7-inch and 5¾-inch diameters. A notice of proposed rulemaking on this subject was published on July 8, 1992 (57 FR 30189).

Until 1974, the only types of headlamp systems permitted by Standard No. 108 were a two headlamp system of lamps with lens diameters of 7 inches, and a four headlamp system of lamps with lens diameters of 5¾ inches. The headlamps were required to be designed to conform to SAE Standard J579a *Sealed Beam Headlamp Units for Motor Vehicles*, August 1965. In 1978, headlamps designed to conform to the newer photometrics of SAE Standard J579c (December 1974) were added to the list of permissible frontal lighting systems, and, effective July 1, 1979, their lenses were required to be marked in accordance with a three-digit code established by the standard. At the same time, NHTSA incorporated by reference SAE Standard J571d *Dimensional Specifications for Sealed Beam Headlamp Units*, June 1976, which contained a single digit code applicable to headlamps designed to conform to SAE J579a. In 1989, in a move toward regulatory simplification, Standard No. 108 was amended to eliminate SAE J571d, and SAE J579a as a permissible headlighting option as these lamps were no longer being manufactured.

Under the nomenclature adopted effective from 1979 to the present, a 7-inch diameter sealed beam headlamp designed to conform to the photometrics of SAE J579c is known as Type 2D1, and the 5¾-inch diameter headlamps as Types 1C1 and 2C1. These alpha-numeric type designations are required to be placed on the headlamp lenses in order to facilitate replacement of headlamps with those of like performance.

Lectric Limited Inc., and Wagner Lighting Division of Cooper Industries Inc., petitioned for rulemaking to allow use of "1", "2", and "Top" as markings to identify Type 1C1, 2C1, and 2D1 headlamps. The designators "1" and "2" were required for headlamps designed to conform to SAE Standards J571d and J579a. The headlamps contemplated by the petitioners would be designed to conform to the contemporary photometrics of SAE J579c.

Thus, the headlamps would have the appearance of those which were standard equipment on all passenger cars of 1974 and previous model years (as well as those of subsequent model years intended to meet SAE J579a), but have the performance required today. A rule of this nature would allow the petitioners "to satisfy a previously unaddressed need in the classic and collector car market." This need is for replacement headlamps on older vehicles to replicate the appearance of the original headlamps. According to the petitioners, the owners of such vehicles will not accept a replacement headlamp with descriptive lettering which is incorrect in appearance for the era in which the car was manufactured. General Motors has granted the petitioners a license to use GM's "Guide T-3" marking on the lamps as it was in effect during the 1950s to 1970s.

Petitioners stated that these headlamps will be sold only through wholesalers and retailers who service the classic and restored car market. Their low volume and consequent high cost is not likely to attract the average consumer who simply owns and drives an old car.

NHTSA granted the petition and proposed the removal of a regulatory barrier to the manufacture of new headlamps for vehicles of special interest to collectors. Comments were received from Chicago Corvette Supply, Rainbow Unlimited, Broughton Automotive, General Motors Corporation, Zip Products, Ford Motor Company, Chrysler Corporation, and Cooper Wagner Lighting. The comments were unanimous in support of the alternative lens marking proposal. Accordingly, S5.8 *Replacement Equipment* is amended to allow the requested marking as an alternative to that presently required (that specified by SAE Standard J1383 APR85 which adopted the NHTSA nomenclature).

In reviewing Standard No. 108, NHTSA found that a number of the exceptions of S5.1 *Required Motor Vehicle Lighting Equipment* in fact apply to individual items of replacement equipment rather than equipment comprised in new vehicle lighting systems. From the standpoint of regulatory consistency and logic, the agency proposed a transfer of these provisions to S5.8, and a consequent redesignation of the remaining subparagraphs of S5.1. Ford pointed out that the redesignation of subparagraphs S5.1.1.11 and S5.1.1.12 as subparagraphs S5.8.5 and S5.8.6 would have the unintended effect of removing, from the standards for original equipment parking lamps and taillamps, the provision of photometric compliance on a zonal rather than test point basis. NHTSA agrees, and is retaining the original equipment portion of these subparagraphs under S5.1, as well as the provisions for motorcycle turn signals which were similarly affected.

While reviewing Ford's comment, NHTSA also discovered that S5.1.1.11, as published in the October 1, 1991, revision of 49 CFR is inconsistent with the actual text as a result of apparent printing errors. The words "Table 1 and Table 3 of SAE J588 NOV84 *Turn Signal Lamps*" were substituted for "Figure 1b" in an inappropriate place in addition to the proper place, and the second sentence of the subparagraph was omitted. These errors have been corrected.

Ford also commented that the redesignations proposed in S5.1 were in conflict with the subparagraph designations relating to center highmounted stop lamps for vehicles other than passenger cars that were adopted on April 19, 1991 (56 FR 16105), but that will not become effective until September 1, 1993. In agreement with this comment, NHTSA published a notice in the Federal Register that accelerated the effective date of the redesignations to October 1, 1992 (57 FR 45327). Thus, the redesignations adopted by this notice are consistent with the redesignations adopted in April 1991 that are now effective.

There were two further comments by Ford that the agency has not adopted. NHTSA proposed to delete all footnotes and associated references in the Tables. These footnotes originated in the early days of Standard No. 108 as a guide to manufacturers unfamiliar with the standard. NHTSA deemed their continued presence no longer necessary for regulatory clarity. Ford disagreed, and recommended revisions consistent with the redesignations. Because no other commenters addressed the point, the agency has concluded that Standard No. 108 is sufficiently clear to industry that the footnotes no longer serve a

useful purpose, and they are deleted as proposed.

Ford also requested the addition of language to Standard No. 108 stating that stop lamps and turn signal lamps are not subject to the photometric guidelines at each test point in SAE Standards J586 FEB84 and J588 NOV84. The company believed that this would clarify a previous statement of the agency that these SAE standards provide that compliance is determined through sums of test points within a group rather than doing so at individual test points. NHTSA believes that the standard is clear enough without the language that Ford suggests. These SAE standards specify photometric compliance on a zonal basis. The design guidelines for each test point are intended to assist in the design of lamps which will meet the zonal requirements. The SAE is not ambiguous regarding the distinction between guidelines and requirements.

Effective Date

Because the amendment relieves a regulatory barrier not required for safety and imposes no additional burden upon any regulated party, it is found for good cause shown that an effective date earlier than 180 days after issuance of the final rule is in the public interest, and the rule is effective 30 days after its publication in the **Federal Register**.

The rule will not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action and has determined that it is neither major within the meaning of Executive Order 12291 "Federal Regulation", nor significant under Department of Transportation regulatory policies and procedures. The amendment to the identification mark requirements will not affect the cost of producing headlamps. The agency concludes that the impacts are so minimal as not to warrant the preparation of a full regulatory evaluation.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action will not have a significant economic effect upon a substantial number of small entities. Motor vehicle manufacturers and lighting manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected as the price of new motor vehicles should not be impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." It has been determined that the rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action will not have a significant effect upon the environment. There is no environmental impact associated with the marking of headlamp lenses. The rulemaking action will not have an effect upon fuel consumption.

List of Subjects in Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. S5.1.1.6 (a) and (b) are redesignated S5.8.3 (a) and (b), and S5.1.1.6(c) is removed.

3. S5.1.1.7(a) is redesignated S5.8.4(a). The first sentence of S5.1.1.7(b) is redesignated S5.8.4(b). The second sentence of S5.1.1.7(b) is designated S5.8.5. The third sentence of S5.1.1.7(b) is removed. S5.1.1.7(c) is removed.

4. New paragraph S5.1.1.7 is added to read:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5 *Requirements.*

* * * * *

S5.1.1.7 A motorcycle turn signal lamp need meet only one-half of the minimum photometric values specified in Table 1 and Table 3 of SAE J588 NOV84 *Turn Signal Lamps.*

* * * * *

5. S5.1.1.11 is redesignated S5.1.1.6, and is revised to read:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5 *Requirements.*

* * * * *

S5.1.1.6 Instead of the photometric values specified in Table 1 of SAE Standards J222 September 1970, or J585e September 1977, a parking lamp or tail lamp, respectively, shall meet the minimum percentage specified in Figure 1a of the corresponding minimum allowable value specified in Figure 1b. The maximum candlepower output of a parking lamp shall not exceed that prescribed in Figure 1b, or of a tail lamp, that prescribed in Figure 1b at H or above. If the sum of the percentages of the minimum candlepower measured at the test points is not less than that specified for each group listed in Figure 1c, a parking lamp or tail lamp is not required to meet the minimum photometric value at each test point specified in SAE Standards J222 or J585e respectively.

* * * * *

6. New paragraph S5.1.1.11 is added to read:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5 *Requirements.*

* * * * *

S5.1.1.11 A stop lamp that is not optically combined, as defined by SAE Information Report J387 *Terminology—Motor Vehicle Lighting* NOV87, with a turn signal lamp, shall remain activated when the turn signal lamp is flashing.

* * * * *

7. S5.1.1.12 is removed, and S5.1.1.32 is redesignated S5.1.1.12.

8. S5.1.1.23 is redesignated S5.8.8.

9. S5.1.1.24 is redesignated S5.8.9.

10. S5.1.1.29 is redesignated S5.1.23.

11. S5.1.1.26 is removed, and S5.1.1.31 is redesignated S5.1.1.26.

12. S5.1.1.30 is redesignated S5.1.1.24.

13. Section S5.8 *Replacement equipment* is amended as follows:

(a) Revising S5.8.1 to read:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5 Requirements.

* * * * *

S5.8.1 Except as provided below, each lamp, reflective device, or item of associated equipment manufactured to replace any lamp, reflective device, or item of associated equipment on any vehicle to which this standard applies, shall be designed to conform to this standard.

* * * * *

(b) Redesignating S5.8.2 as S5.8.10.

(c) Adding new paragraph S5.8.2 to read:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5 Requirements.

* * * * *

S5.8.2. A Type C replacement headlamp designed to conform to the requirements of paragraph S7.3.2(a) through (d) of this standard may be marked "1" and "2" rather than "1C1" and "2C1" respectively. A Type D replacement headlamp designed to conform to S7.3.2(a) through (c) and S7.3.5(b) of this standard may be marked "TOP" or "2" rather than "2D1".

* * * * *

14. New paragraph S5.8.6 is added to read:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5 Requirements.

* * * * *

S5.8.6. Instead of the photometric values specified in SAE Standards J586c and J588e, a stop lamp manufactured to replace a stop lamp designed to conform to SAE Standard J586c, or a turn signal lamp manufactured to replace a turn signal lamp designed to conform to SAE Standard J588e, shall meet the minimum percentage specified in Figure 1a of the corresponding minimum allowable value specified in Figure 1b. The maximum candlepower output of each such stop lamp or turn signal lamp shall not exceed that prescribed in Figure 1b. If the sum of the percentages of the minimum candlepower measured at the test points is not less than that specified for each group listed in Figure 1c, a stop lamp or turn signal lamp is not required to meet the minimum photometric value at each test point specified in SAE Standards J586c and J588e, respectively.

* * * * *

15. New paragraph S5.8.7 is added to read:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5 Requirements.

* * * * *

S5.8.7 Note 6 of Table 1 in SAE Standard J588e, *Turn Signal Lamps*, September 1970, does not apply.

16. Tables I, II, III, and IV are amended to delete all footnotes and associated references in the text thereof.

Issued on: February 24, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–4634 Filed 3–2–93; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 58, No. 40
Wednesday, March 3, 1993

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 92-112-1]

In Vitro Tests in Place of Animal Tests for Immunogenicity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the use of in vitro tests in place of animal tests for immunogenicity. This amendment would provide for the use of a parallel line assay in determining the relative antigenic content (potency) of a serial of product derived from an approved Master Seed which has been tested for immunogenicity in a manner acceptable to the Animal and Plant Health Inspection Service. As is currently required for other products tested in vitro, immunogenicity tests would have to be repeated at least every 3 years. The effect of these amendments would be to standardize the method used to calculate relative potency, and to assure that the products concerned remain potent throughout the dating period. These proposed amendments are necessary in order to allow for the use of fewer animals in potency tests for veterinary biologics, to standardize testing methods, and to assure adequate potency.

DATES: Consideration will be given only to comments received on or before May 3, 1993.

ADDRESSES: Please send an original and three copies to Chief, Regulatory Analysis and Development PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-112-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Veterinarian, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 113 *et seq.* (referred to below as the regulations) concern the use of in vitro tests in place of animal tests for determining the relative potency of veterinary biological products. Determining the log 10 virus titer, and performing live bacterial counts on final container samples of product in place of animal inoculation are recognized as valid procedures and are preferred to more expensive and time consuming host animal tests.

Currently, § 113.8 identifies procedures which may provide a basis for exempting a product from a required animal test for release. To be valid, such procedures must be correlated to host animal protection studies which establish the minimum level of antigen required to protect against disease. This minimum level of antigen product, which is referred to as the reference preparation, defines the minimum requirement for the release of each subsequent serial of product based on a valid relative potency assay. This proposed revision of the regulations would retain the current validation procedures but would add an alternative procedure which allows potency to be calculated using a parallel line assay. A parallel line assay is a biometric method which compares the potency response of a product against a standard reference preparation.

This amendment would provide for parallel line assays when enzyme immunosorbent assays (EIA/ELISA) are used to establish the equivalence of two biological preparations: (1) When one preparation has been evaluated by host animal protection study; or (2) when comparing to an established laboratory animal test contained in part 113. At this time, there is no generally accepted best method for comparing the potency responses of these preparations. Therefore, what is required is a biometrically valid method. A biometrically valid parallel line assay has been developed through the cooperative efforts of licensees, researchers, and the National Veterinary Services Laboratories. We are, therefore, proposing to amend § 113.8 by providing for the use of the parallel line assay to determine the relative antigenic content of a serial of product derived from an approved Master Seed. As in the case of other products which utilize in vitro tests, repeat immunogenicity tests would have to be performed at least every 3 years to assure adequate potency throughout the dating period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291 and Department Regulation 1512-1 and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed amendment, if adopted, would supplement and expand the current regulations to allow the use of any valid EIA assay procedure to establish potency provided it satisfies the parallel line criteria. Ultimately, this revision may affect licensed firms (120 total) that use EIA-based relative potency assays. This proposal, however, does not impose any additional economic burden since the testing of product for potency is already required by § 113.5 of the regulations which specifies that no biological product shall be released prior to the completion of tests prescribed in a filed Outline of Production or Standard Requirement to establish that the product is pure, safe, potent, and efficacious. The overall effect of this revision would be to reduce the cost of potency testing by providing an alternative to the more expensive host animal tests.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws, regulations, and policies that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection provisions included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, ORIM, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 113 would be amended as follows:

PART 113–STANDARD REQUIREMENTS

1. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 113.8 would be amended as follows:

a. The section heading would be revised.

b. Paragraph (a) would be revised.

c. Paragraph (b) the introductory text would be revised.

d. Paragraph (b)(5) would be removed.

e. Paragraph (c) would be redesignated as paragraph (e) and new paragraphs (c) and (d) would be added.

As amended § 113.8 would read as follows:

§ 113.8 In vitro tests in place of animal tests for immunogenicity.

(a) The Administrator may exempt a product from a required animal test for release when an evaluation can, with reasonable certainty, be made by:

(1) Testing the Master Seed for immunogenicity in a manner acceptable to the Animal and Plant Health Inspection Service (APHIS);

(2) Establishing a satisfactory potency for the product based on the protective dose used in the Master Seed immunogenicity test plus an adequate average allowance for adverse conditions and test error. Acceptable potency tests shall include:

(i) Determining the $\log_{10}$ virus titer;

(ii) Determining the live bacterial count; and

(iii) Determining the relative antigenic content, as compared with a reference, using a parallel line assay.

(3) Determining the potency of each serial in an accepted test system.

(b) Each serial and subserial of desiccated live product and bulk or final container samples of completed liquid live product derived from an approved Master Seed shall be evaluated by a test procedure acceptable to APHIS. On the basis of the results of the test, as compared with the required minimum potency, each serial shall either be released to the firm for marketing or withheld from the market. The evaluation of such products shall be made in accordance with this paragraph.

* * * * *

(c) On the basis of the results of the test, as compared to the required minimum potency, bulk or final container samples of completed product derived from an approved Master Seed and evaluated for relative antigenic content, as compared with a reference, by a parallel line assay procedure acceptable to APHIS shall be either released to the firm for marketing or withheld from market. The evaluation of such products shall be made in accordance with this paragraph.

(1) A test that results in no valid lines is considered a no test and can be repeated.

(2) An initial test that results in valid lines that are not parallel is considered a valid equivocal test that is neither satisfactory nor unsatisfactory.

(3) If the initial test shows that potency equals or exceeds the required minimum potency, the serial is satisfactory without additional testing.

(4) If the initial test is an equivocal test due to lack of parallelism, the serial may be retested up to three times: *Provided,* That if the test is not repeated, the serial shall be deemed unsatisfactory.

(i) If a least 50% of all valid tests show that potency equals of exceeds the required minimum potency, the serial is satisfactory.

(ii) If greater than 50% of all valid tests show either lack of parallelism or that potency is less than the required minimum potency, the serial is unsatisfactory.

(5) If the initial test shows that potency is less than the required minimum potency, the serial may be retested at least twice but no more than three times. *Provided,* That if the test is not repeated, the serial shall be deemed unsatisfactory.

(i) If at least 50% of all valid tests show that potency equals or exceeds the required minimum potency, the serial is satisfactory.

(ii) If greater than 50% of all valid tests show either lack of parallelism or that potency is less than the required minimum potency, the serial is unsatisfactory.

(d) Immunogenicity tests shall be repeated at least every 3 years.

(1) The accuracy of the protective dose established in the Master Seed immunogenicity test and defined as $\log_{10}$ virus titer or live bacterial count shall be confirmed in 3 years, unless use of the lot of Master Seed previously tested is discontinued. The Master Seed shall be retested for immunogenicity in a manner acceptable to APHIS.

(2) The lot of reference product used to determine relative antigenic content shall have an initial dating period equal to the dating period of the biological product. The reference product may be granted extensions of dating equal to or exceeding the original dating period by confirming the potency of the reference product at the expiration date in a manner acceptable to APHIS.

* * * * *

Done in Washington, DC, this 25th day of February 1993.

Kenneth C. Clayton,

Acting Assistant Secretary, Marketing and Inspection Service.

[FR Doc. 93–4872 Filed 3–2–93; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL ELECTION COMMISSION

11 CFR Part 102

[Notice 1993–9]

Rulemaking Petition: Citizens Against David Duke; Notice of Availability

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition: Notice of availability.

SUMMARY: On February 5, 1993, the Commission received a Petition for Rulemaking from Citizens Against David Duke ["CADD"]. The petition requests the Commission to reconsider its rules on special fundraising projects and other use of candidate names by unauthorized committees. The petition is available for public inspection in the Commission's Public Records Office.

DATES: Statements in support of or in opposition to the petition must be filed on or before April 2, 1993.

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

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Rulemaking Petition: Notice of Availability

Petitioners have requested that the Commission reconsider its rules on special fundraising projects and other use of candidate names by unauthorized committees. These rules were promulgated on July 15, 1992, and became effective on November 4, 1992. (57 FR 31424, July 15, 1992).

The pertinent rules prohibit the use of a candidate's name in the title of any fundraising project or other communication of any committee that has not been authorized by that candidate. 11 CFR 102.14(a). The petition questions the application of these rules to projects that oppose, rather than support, federal candidates.

Copies of the Petition for Rulemaking are available for public inspection at the Commission's Public Records Office, 999 E Street, NW., Washington, DC 20463, Monday through Friday between the hours of 9 a.m. and 5 p.m.

Statements in support of or in opposition to the Petition for Rulemaking must be submitted in writing by April 2, 1993. Consideration of the merits of the petition will be deferred until the close of the public comment period.

Dated: February 26, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–4861 Filed 3–2–93; 8:45 am]

BILLING CODE 6715–01–M

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11 CFR Parts 102 and 110

[Notice 1993–8]

Multicandidate Political Committees

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is seeking comments on proposed revisions to 11 CFR parts 102 and 110, regarding multicandidate political committees. The revisions would require political committees to note on their Statements of Organization whether they had achieved multicandidate status; provide documentation to the Commission verifying such status at the time this was first reported; and give written notice of this status to candidates and their committees that receive campaign contributions from multicandidate committees. These revisions would help the Commission carry out its statutory responsibility to maintain a current Multicandidate Committee Index, and also help candidates determine what level of contributions they could accept from donor committees.

DATES: Comments must be received on or before April 2, 1993.

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

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: A political committee may generally contribute a maximum of $1,000 per election to a federal candidate or that candidate's authorized committee. 2 U.S.C. 441a(a)(1)(A), 11 CFR 110.1(b)(1). However, a "multicandidate political committee" may contribute a maximum of $5,000 per candidate, per election. 2 U.S.C. 441a(a)(2)(A), 11 CFR 110.2(b)(1).

A political committee qualifies as a "multicandidate political committee" if it has been registered with the Federal Election Commission for at least six months; received contributions from more than 50 persons; and, except for state party organizations, made contributions to five or more candidates for federal office. 2 U.S.C. 441a(a)(4), 11 CFR 100.5(e)(3). The Commission is required to maintain an index of committees that have qualified as multicandidate committees. 2 U.S.C. 438(a)(6)(C).

At the present time, a committee informs the Commission that it has qualified as a multicandidate committee by checking the appropriate box on the first regularly-scheduled Report of Receipts and Disbursements [FEC Form 3X] due after this status is achieved. This can result in a significant time lapse between the date on which the committee qualifies and the date on which this information is made known to the Commission, and hence to the general public. For example, if a committee achieves multicandidate status shortly after filing its July 31 semi-annual report in a non-election year, the Commission's Index will not list this committee until after the committee files the year-end report due on January 31 of the following year. 2 U.S.C. 434(a)(4), 11 CFR 104.5. A candidate or candidate's committee may find it difficult to verify the legality of a contribution over $1,000 received during this period.

This Notice proposes several revisions to current rules in an effort to ameliorate this situation. The first would require that information on multicandidate status be reported as an amendment to the Statement of Organization that each political committee is required to file. 2 U.S.C. 433(a), 11 CFR 102.1. Any change in information previously submitted in a Statement or Organization must be reported to the Commission no later than 10 days after the date of the change. 2 U.S.C. 433(c), 11 CFR 102.2(a)(2). (Information on multicandidate status could not be reported on an original Statement of Organization, because of the requirement that a committee be registered at least six months before it can qualify as a multicandidate committee.)

Another proposed revision would require each committee to submit to the Commission data verifying its multicandidate status, at the time such status is reported. This action is required because the Commission would otherwise be unable to verify that a committee had qualified as a multicandidate committee.

Formerly, this information was apparent from the committee's reports filed at the time this status was reported. Under the proposed change, however, the committee would be required to provide this information at the time it amends its Statement of Organization, since the information may not have been reported by the time the

amended Statement of Organization is filed.

In order to provide this information, a committee would provide the Commission with: (1) A certification that it had received contributions from more than 50 people, (2) the date on which it first registered with the Commission, and (3) a listing of the federal candidates it had supported, if this information was not available from the other documentation. The Commission welcomes comments on how else this information could be documented.

Finally, the proposal would require multicandidate committees to notify recipients of this status in writing, at the time a contribution was made. This approach would allow a candidate or authorized committee to easily determine the legality of a committee contribution over $1,000.

The Notice does not specify the nature of this writing. Multicandidate committees might choose to have this information printed on their checks and/or their letterhead stationery. Prior to the time this was available, they could handwrite or type this information on their checks. Alternatively, they could include this information in the body of an accompanying letter or other communication.

The Commission welcomes comments on any aspect of this proposal, as well as on any related topic.

List of Subjects

11 CFR Part 102

Campaign funds, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political candidates, Political committees and parties.

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

The attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that any entities affected are already required to comply with the Act's requirements in this area.

For the reasons set out in the preamble, it is proposed to amend title 11, chapter I as follows:

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for part 102 would continue to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

2. In section 102.2, paragraph (a)(1)(vi) would be revised and paragraphs (a)(1)(vii) and (a)(3) would be added, to read as follows:

§ 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433(b), (c)).

(a) * * *

(1) * * *

(vi) A listing of all banks, safe deposit boxes, or other depositories used by the committee;

(vii) If the committee is an unauthorized committee, whether the committee has qualified as a multicandidate committee as defined in 11 CFR 100.5(e)(3).

* * * * *

(3) A committee shall certify to the Commission that it has satisfied the criteria for becoming a multicandidate committee as set forth at 11 CFR 100.5(e)(3) at the time this status is reported.

* * * * *

PART 110—[AMENDED]

3. The authority citation for part 110 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 473d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

4. In § 110.2, paragraph (a) would be redesignated as paragraph (a)(1) and new paragraph (a)(2) would be added, to read as follows:

§ 110.2 Contributions by multicandidate political committees (2 U.S.C. 441a(a)(2)).

(a) * * *

(2) *Notice to Recipients.* Each multicandidate committee that makes a contribution under this section shall notify the recipient in writing of its status as a multicandidate committee.

* * * * *

Dated: February 26, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–4862 Filed 3–2–93; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–216–AD]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes. This proposal would require inspections to detect cracking of the floor beams and the side box-beams between frames 42 and 43, and repair of cracks. It also would require a modification of the pressure floor which, when accomplished, would terminate the inspection requirements. This proposal is prompted by results of a full-scale fatigue test. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the fuselage.

DATES: Comments must be received by April 27, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–216–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2104; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall

identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–216–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–216–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de ÍAviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320 series airplanes. The DGAC advises that during a full-scale fatigue test on an Airbus Industrie Model A320 series airplane, fatigue cracks were detected between frames 42 and 43. At 42,810 simulated flight cycles, cracks were detected in the top inboard horizontal flanges of the outer floor beams and side box-beams. At 77,154 simulated flight cycles, cracks were detected in the inboard wall of the side box-beams. At 85,970 simulated flight cycles, a crack was detected in the fillet radius of the top outboard flange. At 95,956 simulated flight cycles, a crack was detected in the flange corner-radius of the side box-beam. No fatigue cracks have been detected on in-service Model A320 series airplanes. However, based on the results of the fatigue test, it is apparent that fatigue cracking potentially could occur as these airplane accumulate flight cycles. Such fatigue cracking, if not detected and corrected in a timely manner, could lead to reduced structural integrity of the fuselage.

Airbus Industrie has issued Service Bulletin A320–53–1024, dated September 23, 1992, which describes procedures for conducting eddy current inspections around the fastener bolt holes at the inboard flange of the floor beam, in the side box-beams, at the two sides of the pressure floors, and at the vertical integral stiffener. This service bulletin also describes procedures for conducting visual inspections of the fillet radius of the top outboard flange and the flange corner-radius of the slanted inboard flange of the side box-beam. The inspection area is between frame 42 and frame 43.

Airbus Industrie has also issued Service Bulletin A320–53–1023, dated September 23, 1992, as amended by Service Bulletin Change Notice 0A, dated January 20, 1993, which describes procedures for accomplishing Modification 21202K1225. This modification entails cold expansion of the fastener/bolt holes in the horizontal flanges of the outer floor beams and side box-beams and the installation of elongated fittings, corner fittings, and support angles. When accomplished, this modification eliminates the need for the inspections of the floor beams and the side box-beams.

The DGAC classified these service bulletins as mandatory and issued French Airworthiness Directive 92–205–033(B), dated September 30, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspections to detect cracking of the floor beams and the side box-beams between frames 42 and 43, and repair of the cracks. The inspections would be required to be accomplished in accordance with Airbus Industrie Service Bulletin A320–53–1024, dated September 23, 1992, described previously.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. Therefore, in consonance with these considerations, this proposal would require a modification to reinforce the pressure floor, which would terminate the inspection requirements of this AD. The modification would be required to be accomplished in accordance with Airbus Industrie Service Bulletin A320–53–1023, dated September 23, 1992, described previously.

The FAA estimates that 22 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 24 work hours per airplane to accomplish the proposed inspections, and 54 work hours per airplane to accomplish the proposed modification. The average labor rate is $55 per work hour. Required parts would cost approximately $5,603 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $217,646, or $9,893 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Airbus Industrie: Docket 92–NM–216–AD.

Applicability: Model A320 series airplanes; manufacturer's serial numbers 005 through 008; inclusive, 010 through 078, inclusive; and 080 through 108, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings, or 6 months after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with Airbus Industrie Service Bulletin A320–53–1024, dated September 23, 1992:

(1) Conduct an eddy current inspection to detect cracking around the fastener bolt holes at the inboard flange of the floor beam, in the side box-beams, at the two sides of the pressure floor, and at the vertical integral stiffener between frame 42 and frame 43; and

(2) Conduct a detailed visual inspection to detect cracking of the fillet radius of the top outboard flange and the flange corner-radius of the slanted inboard flange of the side box-beam between frame 42 and frame 43.

(b) If no crack is detected during either inspection required by paragraph (a) of this AD, repeat the inspections at intervals not to exceed 6,000 landings.

(c) If a crack is detected during the inspections required by paragraph (a) or (b) of this AD, prior to further flight, repair the crack in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(d) Prior to the accumulation of 18,000 total landings, accomplish Modification 21202K1225, in accordance with Airbus Industrie Service Bulletin A320–53–1023, dated September 23, 1992, as amended by Service Bulletin Change Notice 0A, dated January 20, 1993. Accomplishment of this modification constitutes terminating action for the inspection requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 25, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–4834 Filed 3–2–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–231–AD]

Airworthiness Directives; Canadair Model CL–600–1A11 and CL–600–2A12 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Model CL–600 series airplanes, that currently requires a one-time inspection to verify proper installation of the 8 gauge feeder wires from generators 1 and 2 and the auxiliary power unit (APU), and correction or replacement of discrepant parts. That action was prompted by reports of wire overheating under heavy electrical load conditions. This action would limit the applicability of the rule by eliminating certain airplanes that are equipped with improved wiring. The actions specified by the proposed AD are intended to prevent potential wire overheating, which could result in a cabin fire.

DATES: Comments must be received by April 27, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–231–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Aerospace Engineer, Systems and Equipment Branch, ANE–173, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to

Docket Number 92–NM–231–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–231–AD, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056.

Discussion

On March 24, 1983, the FAA issued AD 83–07–09, Amendment 39–4609 (48 FR 14353, April 4, 1983), applicable to all Canadair Model CL–600 series airplanes, to require a one-time inspection to verify proper installation of the 8 gauge feeder wires from generators 1 and 2 and the auxiliary power unit (APU), and correction or replacement of discrepant parts. That action was prompted by reports of wire overheating under heavy electrical load conditions. The requirements of that AD are intended to prevent potential wire overheating, which could result in a cabin fire.

Since the issuance of that AD, Transport Canada Aviation, which is the airworthiness authority for Canada, has advised the FAA that certain later models of the Model CL–600 series airplanes are equipped with improved generator and APU feeder wires. These airplanes are not subject to the unsafe condition addressed in AD 83–07–09.

Transport Canada Aviation has issued Canadian Airworthiness Directive CF–82–12R1, dated August 28, 1992, that describes a one-time inspection to verify proper installation of the 8 gauge feeder wires from generators 1 and 2 and the APU and correction or replacement of discrepant parts. Additionally, this Canadian airworthiness directive limits the effectivity to include only Model CL–600–1A11 and CL–600–2A12 series airplanes. The later models have improved generator and APU feeder wires.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 83–07–09 to continue to require a one-time inspection to verify proper installation of the 8 gauge feeder wires from generators 1 and 2 and the APU and correction or replacement of discrepant parts. Additionally, the proposed AD would limit the applicability to include only Model CL–600–1A11 and CL–600–2A12 series airplanes. The actions would be required to be accomplished in accordance with Canadair Drawings 600–58001, Note 17; or 600–58031, Note 14 and CL–600 Completion Center Handbook Section 6.

The FAA estimates that 90 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $24,750, or $275 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–4609 (48 FR 14353, April 4, 1983), and by adding a new airworthiness directive (AD), to read as follows:

Canadair: Docket 92–NM–231–AD. Supersedes AD 83–07–09, Amendment 39–4609.

Applicability: Model CL–600–1A11 and CL–600–2A12 series airplanes, certificated in any category.

Note: Paragraph (a) of this AD restates the requirements of AD 83–07–09, paragraph 1. As allowed by the phrase, "unless accomplished previously," if the requirements of AD 83–07–09 have been accomplished previously, paragraph (a) of this AD does not require the one-time inspection to be repeated.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible wire overheating, which could result in a cabin fire, accomplish the following:

(a) Within 300 hours time-in-service or within 3 calendar months after April 13, 1983 (the effective date of AD 83–07–09, Amendment 39–4609), whichever occurs earlier, perform an inspection to verify proper installation of the 8 gauge feeder wires from generators 1 and 2 and the APU, in accordance with Canadair Drawings 600–58001, Note 17; or 600–58031, Note 14; and CL–600 Completion Centre Handbook Section 6. Prior to further flight, correct any discrepant wires in accordance with the drawings or handbook.

(b) Replacement of the 8 gauge generator 1, generator 2, and auxiliary power unit (APU) feeder wires with 4 gauge feeder wires of the same type constitutes an approved alternative method of compliance for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 25, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-4835 Filed 3-2-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 92-NM-248-AD]

Airworthiness Directives; Beech Model 400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Beech Model 400A airplanes. This proposal would require a one-time inspection to verify the installation of all rivets in the area adjacent to the upper edge of the emergency exit door, and installation of any missing rivets. This proposal is prompted by reports that, during manufacturing, 35 rivets may have been inadvertently omitted from the area adjacent to the upper edge of the emergency exit door. The actions specified by the proposed AD are intended to prevent structural failure of the emergency door frame support, which could lead to decompression of the cabin.

DATES: Comments must be received by April 27, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-248-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, Airframe Branch, ACE-120W, FAA, Small Airplane Directorate, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4122; fax (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-248-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-248-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

During the manufacture of certain Beech Model 400A airplanes, 35 rivets may have been inadvertently omitted from the area adjacent to the upper edge of the emergency exit door. Operating these airplanes without these rivets may eventually affect the fatigue characteristics of the fuselage stringer skin and attachment rivets adjacent to the door, and could lead to fatigue cracking of these fuselage components. This condition, if not corrected, could result in structural failure of the emergency door frame support, which could lead to decompression of the cabin.

The FAA has reviewed and approved Beechcraft Service Bulletin 2482, dated December 1992, that describes procedures for a one-time inspection to verify the installation of all rivets in the area adjacent to the upper edge of the emergency exit door, and installation of any missing rivets.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time inspection to verify the installation of all rivets in the area adjacent to the upper edge of the emergency exit door, and installation of any missing rivets. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 59 Beech Model 400A airplanes of the affected design in the worldwide fleet. The FAA estimates that 41 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,765, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

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

Beech: Docket 92–NM–248–AD.

Applicability: Model 400A airplanes, serial numbers RK–1 through RK–41, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the emergency door frame support, which could lead to decompression of the cabin, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, perform a one-time inspection to verify the installation of all rivets in the area adjacent to the upper edge of the emergency exit door, in accordance with Beechcraft Service Bulletin 2482, dated December 1992.

(1) If no rivets are missing, no further action is required by this AD.

(2) If any rivet is missing, prior to further flight, install a rivet in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 25, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–4833 Filed 3–2–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–200–AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes. This proposal would require incorporation of certain structural modifications. This proposal is prompted by an evaluation by the Model 737 Structures Working Group, comprised of aircraft operators, manufacturers, and the FAA. This Working Group evaluated Boeing service bulletins that must be included as part of the "Aging Airplane Structural Modification Program." The actions specified by the proposed AD are intended to prevent degradation in the structural capabilities of the affected airplanes. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

DATES: Comments must be received by April 27, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056, telephone (206) 227–2779; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–200–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a high-cycle transport category airplane (specifically, a Boeing Model 737) was involved in an accident in which the airplane suffered major structural damage during flight. Investigation of this accident revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on other high-cycle transport category airplanes in its fleet revealed that other airplanes had extensive fatigue cracking and corrosion.

Prompted by the data gained from this accident, the FAA sponsored a

conference on aging airplanes in June 1988, which was attended by representatives from the aviation industry and airworthiness authorities from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, rather than retiring them, increased attention needed to be focused on the aging airplane fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America agreed to undertake the task of identifying and implementing procedures to ensure continued structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force (AATF) was established in August 1988, with members representing aircraft manufacturers, operators, regulatory authorities, and other aviation representatives worldwide. The objective of the AATF was to sponsor "Working Groups" to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes;
2. Develop corrosion-directed inspections and prevention programs;
3. Review the adequacy of each operator's structural maintenance program;
4. Review and update the Supplemental Structural Inspections Documents (SSID); and
5. Assess repair quality.

The Working Group assigned to review the Boeing Model 737 series airplanes completed its work on Item 1 (mandatory structural modifications), above, in March 1989. The Working Group's recommendations are contained in Boeing Document Number D6–38505, "Aging Airplane Service Bulletin Structural Modification Program—Model 737–100/–200/–200C," dated March 31, 1989. On January 16, 1990, the FAA issued AD 90–06–02, amendment 39–6489 (55 FR 8372, March 7, 1990), which mandates the installation of the modifications specified in that document.

The Working Group completed its work on Item 2 (corrosion-directed inspections), above, in July 1989, and developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Boeing Model 737 fleet. This program is contained in Boeing Document Number D6–38528, "Aging Airplane Corrosion Prevention and Control Program—Model 737," dated July 28, 1989. On November 5, 1990, the FAA issued AD 90–25–11, amendment 39–6789 (55 FR 49263, November 27, 1990), which mandates the implementation of a corrosion control program.

The action being proposed herein follows from the ongoing activities of the Working Group relative to Item 1 (mandatory structural modifications). The Model 737 Working Group determined that certain service difficulties warranted additional mandatory airplane modifications. The Working Group determined that these modifications should be mandatory to assure continued operational safety of the Boeing Model 737 fleet that have exceeded their economic design service goal. The Working Group's proposal is contained in Boeing Document Number D6–38505, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 737–100/–200/–200C," Revision F, dated April 23, 1992. The FAA has reviewed and approved this Document.

This revision of the Boeing Document includes two new Appendices, A.3 and B.3, which reference additional modifications described in eight service bulletins. These modifications consist of three modifications to the wing, three modifications to the fuselage, one modification to the doors, and one modification to the landing gear.

Since fatigue cracking and corrosion are likely to exist or develop on other products of this same type design, the proposed AD would require modification of Boeing Model 737 series airplanes at their economic design goal, or in some cases, at a specific time, in accordance with the Boeing Document described previously.

The "economic design goal" of an airplane is typically considered to be the period of service, after which a substantial increase in the maintenance costs is expected to take place in order to assure continued operational safety. The economic design goal for the Boeing Model 737 airplane is 20 years for structural problems associated with environmental deterioration, and 75,000 flight cycles for structural problems associated with fatigue damage.

The proposed compliance time for implementation of the mandatory structural modification program is upon reaching the applicable economic design goal or within 4 years after the effective date of the AD, whichever occurs later. This time interval was based upon the ability of the manufacturer to provide the parts necessary for the modification, and the time necessary to incorporate the modifications.

In the interim, safety will be provided by various means currently in place that are considered satisfactory to detect damage prior to the occurrence of an unsafe condition. These include operators' ongoing basic maintenance programs; continuing inspections required by numerous previously issued AD's; the Supplemental Structural Inspection Document (SSID) program, mandated by AD 91–14–20, Amendment 39–7061 (56 FR 30680; July 5, 1991); the FAA's increased emphasis on surveillance of operators' maintenance programs and procedures; and the FAA's participation in programs to physically inspect high-time airplanes during scheduled heavy maintenance.

There are approximately 1,200 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 29 airplanes of U.S. registry would be affected by this proposed AD within the initial threshold of 4 years. The cost to modify each airplane is estimated to be $57,887. This cost includes the price of modification kits, which is $27,252 per airplane, and the estimated number of work hours to accomplish the modifications, which is 557 work hours at $55 per work hour. It does not include downtime, planning, setup, familiarization, or tool acquisition costs. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,678,723 over the 4-year time period. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§3913 [Amended]

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

Boeing: Docket 92-NM-200-AD.

Applicability: Model 737-100, 737-200, 737-200C series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure, accomplish the following:

(a) Except as provided below, prior to reaching the incorporation thresholds listed in Boeing Document No. D6-38505, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 737-100/-200/-200C," Revision F, dated April 23, 1992," or within the next 4 years after the effective date of this AD, whichever occurs later, accomplish the structural modifications listed in Appendices A.3 and B.3 of the Boeing Document. Service bulletins whose threshold is specified in the Boeing Document by a calendar date must be modified by that date in lieu of the 4 years specified in this paragraph.

Note: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements:

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 25, 1992.

Darrell M. Pederson, Acting Manager,

Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 93-4832 Filed 3-2-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ANE-40]

Proposed Revocation of Transition Area; Claremont, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revoke the Claremont, New Hampshire Transition Area. This action is prompted by the relocation of the Claremont Non-Directional Beacon (NDB) and the cancellation of all Standard Instrument Approach Procedures (SIAP) to the Claremont Airport.

DATES: Comments must be received on or before April 16, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, New England Region, Docket No. 92-ANE-40, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299.

The docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299, weekdays, except Federal holidays, between the hours of 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, Airspace Specialist, System Management Branch, ANE-530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299; Telephone: (617) 270-2428; Facsimile: (617) 272-0395.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under "ADDRESSES". Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ANE-40." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, ANE-7, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR 71) to revoke the transition area at Claremont, New Hampshire (NH). This action is being prompted by the relocation of the Claremont Non-Directional Beacon (NDB) and the cancellation of all Standard Instrument Approach Procedures (SIAP) to the Claremont Airport. Transition Areas are published in § 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is

incorporated by reference in 14 CFR 71.1. The Claremont, NH transition area would be removed subsequently from the Order.

The FAA has determined that this proposed regulation 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 proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small business entities under the criteria of the Regulator Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.181 Transition Areas

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ANE NH TA Claremont, NH [Removed]

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Issued in Burlington, Massachusetts, on February 1993.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 93–4876 Filed 3–2–93; 8:45 am]

BILLING CODE 4910–13–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM93–1, Order No. 963]

Complexity in Rates Inquiry

AGENCY: Postal Rate Commission.

ACTION: Extension of time for comments.

SUMMARY: On December 3, 1992, the Commission published an advance notice of proposed rulemaking in the **Federal Register** (57 FR 57124–25) soliciting suggestions from interested persons regarding the consideration which should be given to complexity when examining rate and classification proposals. A number of mailer groups have requested the Commission to either suspend or defer the proceeding. The Commission has decided to extend the period for comments.

DATES: Comments responding to the December 3, 1992, advance notice of proposed rulemaking are due by August 3, 1993.

ADDRESSES: Comments and correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., suite 300, Washington, DC 20268–0001 (telephone: 202/789–6840). All documents submitted in this proceeding are available at the Commission's Docket Office at this address.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Acting Legal Advisor, Postal Rate Commission, 1333 H Street, NW., suite 300, Washington, DC 20268–0001 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: The Commission began this proceeding by publishing a **Federal Register** notice on December 3, 1992, stating that it might be profitable to focus on the topic of the appropriate amount of complexity in rates and classifications outside the confines of a case proposing specific changes. The Commission anticipated providing a forum for the exchange of ideas on whether it is possible to simplify the existing rate and classification schedules while continuing to reflect the other necessary considerations. Three possible outcomes of the proceeding were mentioned in the December 3, 1992, notice: (1) Changes in the Commission's filing rules, (2) publication of a compilation of the comments received, and (3) initiation of one or more classification cases. The Commission has received three comments on its notice. Two are from mailers who have participated in previous Commission rate proceedings. The third comment was submitted by the former Vice Chairman of the Commission.

On January 15, 1993, representatives of ten mailer groups filed a joint motion requesting that the Commission abandon the proceeding or defer the time for filing comments until the beginning of August 1993. The joint motion asserts that consideration of possible simplification of rates and classifications could be done more efficiently if specific proposals were before the Commission. The joint motion mentions ongoing discussions within the Postal Service, as well as talks between the Postal Service and mailer groups. Those who signed the joint motion are concerned that this rulemaking might impede progress being made elsewhere.

Dow Jones & Company, Inc. (Dow Jones), the Commission's Office of the Consumer Advocate (OCA), and the American Bankers Association filed in support of the joint motion. After citing a statement from the former Vice Chairman's comments in this docket, Dow Jones states that the Postal Service should be given the opportunity to devote its resources to developing concrete proposals. The OCA, after noting the trend of developing rates which are more complex but more closely aligned with costs, also expresses a preference for waiting for the Postal Service to file its anticipated classification case.

Newspaper Association of America (NAA) supports the joint motion to the extent of postponing the due date for comments for three months. NAA believes that extension would provide sufficient opportunity for the development of proposals that mailers could address.

We are setting August 3, 1993, as the new date for comments on the December 3, 1992, advance notice of proposed rulemaking. Rather than being a distraction to the Postal Service's and mailers' efforts to develop a classification proposal, we believe these proceedings should be viewed as a resource available to help them. It may provide a convenient opportunity for mailers not involved in the Postal Service's ongoing discussions to have their viewpoints recognized and considered.

Issued by the Commission on February 25, 1993.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 93–4787 Filed 3–2–93; 8:45 am]

BILLING CODE 7710–FW–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-4600-8]

Open Meeting of the Disinfection By-Products Negotiated Rulemaking Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Disinfection By-Products Negotiated Rulemaking Advisory Committee will meet on March 18–19 to develop consensus that can be used as the basis of a proposed rule.

DATES: On March 18, the meeting will begin at 9:30 a.m. and end by 5 p.m. On March 19, the meeting will begin at 8:30 a.m. and end by 4 p.m.

ADDRESSES: The Committee will meet at "Resolve", 1250 24th Street NW., 5th Floor, Washington, DC 20037, [202] 293–4800.

FOR FURTHER INFORMATION: For further information on substantive aspects of the rule, call Stig Regli of EPA's Water Office at [202] 260–7379. For further information on the meeting, call Gail Bingham, the Committee Co-Chair, at [202] 778–9632.

Dated: February 26, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–4890 Filed 3–2–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[OPP-300276; FRL-4572-4]

Acrylic Acid-Sodium Acrylate-Sodium-2-Methylpropanesulfonate Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of acrylic acid-sodium acrylate-sodium-2-methylpropanesulfonate copolymer (CAS No. 97953-25-8) when used as an inert ingredient (dispersing agent) in pesticide formulations applied to growing crops only. This proposed regulation was requested by the Petrolite Corp.

DATES: Comments, identified by the document control number [OPP-300276], must be received on or before April 2, 1993.

ADDRESSES: By mail, submit written comments 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. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of 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 will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in rm. 1132 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: Connie Welch, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 711I, Crystal Mall Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7252.

SUPPLEMENTARY INFORMATION: At the request of the Petrolite Corp., 369 Marshall Ave., St. Louis, MO 63119-1897, the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), proposes to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of acrylic acid-sodium acrylate-sodium-2-methylpropanesulfonate copolymer when used as an inert ingredient (dispersing agent) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided that the data normally required to support the proposed tolerance exemption for acrylic acid-sodium acrylate-sodium-2-methylpropanesulfonate copolymer will not need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances which are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Acrylic acid-sodium acrylate-sodium-2-methylpropanesulfonate copolymer conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria which are used to identify low-risk polymers:

1. The minimum average molecular weight of the above-mentioned copolymer is 4,500. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. The above-mentioned copolymer is not a cationic polymer, nor is it reasonably expected to become a cationic polymer in a natural aquatic environment.

3. The above-mentioned copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. The above-mentioned copolymer contains as an integral part of its

composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. The above-mentioned copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. The above-mentioned copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. The above-mentioned copolymer is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. The above-mentioned copolymer does not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction.

9. The above-mentioned copolymer is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300276]. All written comments filed in response to this petition will be available in the Public Response and Program Resources 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 effect on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: February 18, 1993.

Stephanie R. Irene,

Acting 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 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * *		
Acrylic acid-sodium acrylate-sodium-2-methylpropanesulfonate copolymer (minimum average molecular weight 4,500); CAS No. 97953-25-8.		Dispersing agent
* * * * *		

* * * * *

[FR Doc. 93-4661 Filed 3-2-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 180

[OPP-300277; FRL-4572-5]

RIN 2070-AB78

FD & C Red No. 40; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of FD & C Red No. 40 (CAS Reg. No. 25956-17-6) when used as an inert ingredient (dye, coloring agent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. This proposed regulation was requested by the UNOCAL Corp.

DATES: Comments, identified by the document control number [OPP-300277], must be received on or before April 2, 1993.

ADDRESSES: By mail, submit written comments 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 Hwy., 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 will be included in the public docket by the EPA without prior notice. The public docket is 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: Rosalind L. Gross, Registration

Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 724A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-5971.

SUPPLEMENTARY INFORMATION: UNOCAL Corp., 1201 5th St., Los Angeles, CA 90034, submitted pesticide petition (PP) 2E04132 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of FD & C Red No. 40 ((CAS Reg. No. 25956-17-6), principally disodium salt of 6-hydroxy-5-[(2-methoxy-5-methyl-4-sulfophenyl)azo]-2-naphthalenesulfonic acid) when used as an inert ingredient (dye, coloring agent) not to exceed 0.002 percent by weight in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

The Agency has decided that the data normally required to support the proposed tolerance exemption for FD & C Red No. 40 will not need to be submitted. The rationale for this decision is described below.

1. FD & C Red No. 40 is considered safe for use in coloring foods under 21 CFR 74.340.

2. FD & C Red No. 40 is considered safe for use in coloring drugs under 21 CFR 74.1340.

3. FD & C Red No. 40 is considered safe for use in coloring cosmetics under 21 CFR 74.2340.

4. FD & C Red No. 40 was the subject of an Interagency Working Group chaired by the Food and Drug Administration. The Working Group, which included scientists and statisticians from academia and government, including EPA, reviewed the design and conduct of an *in utero* exposed lifetime rat study and two *in utero* exposed lifetime mouse studies. In the unpublished "Report of the Interagency Working Group on FD & C Red No. 40," June 1981, EPA MRID 412365-03, the Working Group concluded:

> The results from the two mouse studies and the rat study were analyzed statistically both for tumor incidence and time-to-tumor. No pattern of statistically significant increases in the incidence of cancer in relation to FD & C Red No. 40 has been found in any of the three studies***. We find no substantial question of safety and at this time see no need for additional testing in chronic rodent studies.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300277]. All written comments filed in response to this petition will be available in thepublic Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: February 19, 1993.

Stephanie R. Irene,

Acting 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 180.1001(c) is amended in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
FD & C Red No. 40 (CAS Reg. No. 25956-17-6) conforming to 21 CFR 74.340.	Not to exceed 0.002% by weight of pesticide formulation.	Dye, coloring agent.
* * * * * * *		

* * * * *

[FR Doc. 93-4662 Filed 3-2-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[CC Docket No. 93-2; FCC 93-5]

Revised Application and Reporting Requirements for the Domestic Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposed rules to permit certain applicants in the Point-to-Point Microwave Radio Service (PPMS) to begin construction of station facilities upon filing FCC Form 494, rather than waiting until the Commission grants their station authorizations, as required by current rules. The proposed rule changes will serve the public interest by eliminating delays in the delivery of telecommunication services to the public and by allowing greater flexibility to applicants in coordinating construction projects, thereby, reducing construction costs. The Commission is also proposing to streamline or eliminate certain reporting requirements applicable to all applicants in the Domestic Radio Services.

DATES: Comments must be received on or before March 16, 1993, and reply comments on or before April 16, 1993.

ADDRESSES: Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Hayes, Common Carrier Bureau, (202) 634-1798.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rulemaking in CC Docket No. 93-2, adopted January 6, 1993 and released February 9, 1993. The notice of proposed rulemaking is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS, Inc.), suite 140, 2100 M Street NW., DC 20037, telephone (202) 857-3800.

The following collections of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20554. Persons wishing to comment on this collection of information should direct their comments to Jonas Neihardt, (202) 395-4814, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Records Management Division, room 416, Paperwork Reduction Project (3060), Washington, DC 20554. For further information contact Judy Boley, (202) 632-7513.

Title: Amendment of part 21 of the Commission's Rules for the Domestic Public Fixed Radio Services.

OMB Number: None.

Action: New Collections.

Respondents: Businesses or other for profit, including small businesses.

Frequency of Response: On occasion.

Proposed revised forms/requirements	Est. average hrs. per response	Est. annual responses
FCC Form 494	2.5	10,000
FCC Form 494A	.33	300
FCC Form 430	2	300
FCC Form 705	7	1,400

Estimated Annual Burden: 36,039 Hours.

Needs and Uses: The Notice of Proposed Rulemaking (NPRM) solicits public comment on the Commission's proposals to permit applicants in the Point-to-Point Microwave Radio Service (PPMS) to begin construction upon filing FCC Form 494 and prior to grant of an authorization, provided that the PPMS applicants meet certain conditions. The Commission also seeks comment to eliminate the use of the FCC Form 494A by PPMS applicants; to eliminate the use of FCC Form 430 by all part 21 applicants; and to create a new FCC Form 705 (Application for Consent to Assignment or Transfer of Control of Radio Station Construction Authorization or License). The information will be used by the staff in carrying out its duties as set forth in the Communications Act of 1934, as amended.

Summary of Notice of Proposed Rulemaking

1. The Commission proposes to revise part 21 of the rules to permit PPMS applicants to begin construction of proposed facilities upon filing FCC Form 494 (Application for New or Modified Microwave Radio Station License under part 21) and prior to grant of an authorization, provided that certain requirements are met. Specifically, the proposed rules would permit a PPMS applicant to engage in construction upon filing FCC Form 494, provided that its application meets the conditions set forth in § 21.43(c)(3) of the proposed rules. In addition, the Commission seeks comment on whether PPMS applicants requesting modification of existing licenses pursuant to §§ 21.40 and 21.41 of the rules should be permitted to begin construction prior to grant of an authorization under the aforementioned conditions.

2. The Commission also seeks comment on several proposed changes in reporting requirements for part 21 applicants. Under the proposal, FCC Form 430 would be eliminated. FCC Form 494 would be revised to include the licensee qualification information currently reported on FCC Form 430. PPMS applicants would no longer use FCC Form 494A. FCC Form 702 (Application for Consent to Assignment of Radio Station Construction Authorization or License) and FCC Form 704 (Application for Consent to Transfer of Control) would be eliminated. Part 21 applicants would

use a new FCC Form 705 (Application for Consent to Assignment or Transfer of Control of Radio Station Construction Authorization or License) for reporting information currently requested on FCC Forms 702 and 704. The streamlining of these reporting requirements would reduce the filing burden on all PPMS and part 21 applicants.

Regulatory Flexibility Act Initial Analysis

Reason for action. The Commission is proposing to remove the requirement that PPMS applicants receive an authorization prior to the construction of facilities.

Objectives. The objective of this proposal is to give applicants greater flexibility in scheduling construction and enable licensees to begin providing service to the public more quickly. The proposed rule may also result in reduced costs for both the licensees and the public. The rule would also help further the Commission's goal of eliminating unnecessary regulation.

Legal basis. The proposed action is authorized under sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303.

Reporting, recordkeeping and other compliance requirements: None.

Federal rules which overlap, duplicate or conflict with these rules: None.

Description, potential impact and number of small entities involved: This Notice of Proposed Rulemaking will have a minimum impact on small entities by providing them with increased flexibility in the scheduling and consolidation of construction projects thereby reducing construction costs and expediting the initiation of service to the public by Point-to-Point Microwave Radio Service licensees.

Any significant alternatives: None.

Ex Parte Presentations

This is a nonrestricted notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as required by Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Ordering Clauses

Accordingly, pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, that there is issued a notice of proposed rulemaking as hereby provided above.

List of Subjects in 47 CFR Part 21

Communications common carriers, Domestic public fixed radio services, Radio, Reporting and recordkeeping requirements.

Federal Communication Commission.

Donna R. Searcy,

Secretary.

Proposed Amendatory Text

Part 21 of chapter 1 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

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

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552.

2. Section 21.7 is revised to read as follows:

§ 21.7 Standard application form for domestic public fixed radio service licenses.

FCC Form 494 ("Application for a New and Modified Microwave Radio Station License under Part 21") must be submitted and a license granted for each station prior to commencement of any proposed station construction, except as otherwise provided in § 21.43(c). FCC Form 494 also must be submitted to amend any license application, to modify any license pursuant to §§ 21.40(a) and 21.41, to notify the Commission of modifications made pursuant to § 21.42, to delete licensed facilities, and to notify the Commission of any changes in licensee qualification information.

3. Section 21.11 is amended by revising paragraphs (a), (d) and (f) to read as follows:

§ 21.11 Miscellaneous forms shared by all domestic public radio services.

(a) *Licensee qualifications.* FCC Form 494 ("Application for New or Modified Microwave Radio Application") must be filed to notify the Commission of any changes in licensee qualification information within 30 days of the change.

* * * * *

(d) *Assignment of license.* FCC Form 705 ("Application for Consent to Assignment or for Transfer of Control of Radio Station Construction Authorization or License"), must be submitted to assign voluntarily (for example, contract) or involuntarily (for example, death, bankruptcy, or legal disability) the station authorization. In the case of involuntary assignment, the application must be filed within 10 days of the event causing the assignment. FCC Form 705 must also be used for non-substantial (*pro forma*) assignments. Whenever a group of station licenses in the same radio service is to be assigned to a single assignee, a single "blanket" application may be filed to cover the entire group, if the application identifies each station by call sign and station location and if two copies are provided for each station affected. The assignment must be completed within 60 days from the date of authorization. Upon consummation of an approved assignment, the Commission must be notified by letter of the date of consummation within 10 days of its occurrence.

* * * * *

(f) *Transfer of control of corporation holding an authorization or license.* FCC Form 705 ("Application for Consent to Assignment or for Transfer of Control of Radio Station Construction Authorization or License"), must be submitted in order to voluntarily or involuntarily transfer control (*de jure* or *de facto*) of a corporation holding any construction authorizations or licenses. In the case of involuntary transfer of control, the application must be filed within 10 days of the event causing the transfer of control. FCC Form 705 must also be used for non-substantial (*pro forma*) transfers of control. The transfer must be completed within 60 days from the date of authorization. Upon consummation of an approved transfer, the Commission must be notified by letter of the date of consummation within 10 days of its occurrence.

4. Section 21.43 is revised to read as follows:

Section 21.43. Period of construction.

(a) Each license for a radio station for the services included in this part shall specify as a condition therein the period during which construction of facilities must be completed and the station made ready for operation. Construction may not commence until the grant of a license, except as otherwise provided in this section, and must be completed by the date specified in the license as the termination date of the construction period. Except as may be limited by § 21.45(b) or otherwise determined by the Commission for any particular application, the following will be the maximum construction periods for each service:

(1) For stations in the Digital Electronic Message Service, a maximum

of 18 months from the date of the license grant.

(2) For stations in the Point-to-Point Microwave Radio Service, a maximum of 6 months from the date of the license grant.

(3) For all other stations licensed under this part, a maximum of 12 months from the date of the license grant.

(b) Each license for a radio station for the services included in this part, except licenses for radio stations in the Point-to-Point Microwave Radio Service, shall also specify as a condition therein that upon the completion of construction, each licensee must file with the Commission a certification of completion of construction using FCC Form 494A, certifying that the facilities as authorized have been completed and that the station is now operational and ready to provide service to the public, and will remain operational during the license period, unless the license is submitted for cancellation.

(c) Commencing construction prior to grant of a radio station authorization. (1) Scope. Section 21.43(c) applies to all Point-to-Point Microwave Radio Service (PPMS) applicants as defined in § 21.2, including:

(i) Applicants for an initial station authorization in the PPMS;

(ii) Applicants for facility modifications in the PPMS, pursuant to §§ 21.40 and 21.41;

(iii) Applicants to amend pending initial applications in the PPMS.

(2) (i) General rule. After the applicant has filed a Form 494 with the Commission, provided that the requirements of paragraph (c)(3) of this section have been met, the applicant may commence construction.

(ii) Notwithstanding any provision of paragraph (c) of this section, if the Commission for any reason determines that construction should not commence or should be terminated pending the grant of an authorization, the applicant must immediately cease construction upon notification from the Commission. Notification may be made in writing or orally followed with a written confirmation. The Commission, at its discretion, may allow recommencement of construction after it determines, in writing, the reason for making such notification no longer exists.

(3) Conditions. An applicant may not commence or continue construction prior to the grant of an authorization as long as any of the following conditions persist:

(i) The application is mutually exclusive with a previously filed application or authorized station, or a petition to deny has been filed against the application;

(ii) The applicant requests a waiver of a Commission rule pursuant to § 21.19;

(iii) The application is returned as unacceptable for filing pursuant to § 21.20;

(iv) The applicant, where required (and not exempted under § 17.14 of this Chapter), has not filed a notice of proposed construction with the FAA and received a determination from the FAA that the proposed antenna structure would pose no hazard to aviation, and has not received a determination from the Commission as to any required antenna structure marking and lighting specifications;

(v) The applicant has not taken all of the following steps:

(A) Considered whether the proposed facility may have a significant environmental effect pursuant to §§ 1.1301 through 1.1319 of this chapter;

(B) Determined that the proposed facility will not have such an effect; and

(C) Indicated this determination on the Form 494;

(vi) The proposed facility is within 56.3 kilometers (35 miles) of the U.S.-Canadian or U.S.-Mexican border, or is otherwise subject to a treaty or agreement between the United States and Canada or the United States and Mexico regarding frequency coordination, or both.

(4) Applicants who commence construction, prior to receiving an authorization pursuant to this paragraph (c) of this chapter, assume the risk of and have no recourse against the United States on account of:

(i) Not receiving an authorization;

(ii) Errors and time lags in the public notice system;

(iii) Having to alter, relocate or dismantle the facility; and

(iv) Incurring whatever costs may be necessary to bring the facility into compliance with applicable laws and regulations.

(5) Applicants constructing facilities without prior Commission authorization pursuant to paragraph (c) of this section must not commence operating such facilities until after the Commission grants an authorization.

[FR Doc. 93–4609 Filed 3–2–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Parts 64 and 69

[CC Docket No. 90–571; FCC 93–104]

Telecommunications Services for Hearing and Speech Disabled

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Further Notice of Proposed Rulemaking (Further NPRM) proposes to amend parts 64 and 69 of the Commission's rules to establish a telecommunications relay services (TRS) interstate cost recovery plan. This action is pursuant to requirements of the Americans with Disabilities Act of 1990 (ADA) which, among other things, amended Title II of the Communications Act of 1934 by adding section 225, and will have the effect of implementing an effective cost recovery program for all carriers.

DATES: Comments due April 5, 1993, Reply Comments due April 19, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Dubroof, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau, (202) 634–1808.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Further NPRM in the matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990. The item was adopted by the Commission on February 19, 1993, and released February 25, 1993, and bears the title of "Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking" (CC Docket 90–571, FCC 93–104). The Order on Reconsideration and Second Report and Order are summarized elsewhere in this issue.

The Further NPRM and supporting file are available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the FCC Reference Center, room 239, 1919 M St., NW., Washington, DC, or copies may be purchased from the Commission's duplicating contractor, ITS, 2100 M St., NW., suite 140, Washington, DC 20037, phone (202) 857–3800. The Further NPRM will be published in the FCC Record.

Paperwork Reduction Act Statement

The following collection of information contained in this proposed rule has been submitted to the Office of

Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037. Persons wishing to comment on this collection of information should direct their comments to Jonas Neihardt, (202) 395–4814, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget should also be sent to the Commission, Records Management Division, Room 416, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, (202) 632–7513.

Title: Proposed Rules and Requirements for Telecommunications Relay Services (TRS) Interstate Cost Recovery.

OMB Number: None.

Action: Proposed new collection.

Respondents: Business or other for profit.

Frequency of Response: On occasion, semi-annual.

Estimated Annual Burden: 120 responses; 4 hours per response; 480 hours total.

Needs and Uses: The notice of Proposed Rulemaking solicits public comment to establish a TRS interstate cost recovery plan and on the date to be filed by TRS providers with NECA. The information will be used to calculate a national average rate requirement to recover the total interstate TRS revenue.

Analysis of Proceeding

This summarizes the Commission's Further NPRM in the matter of Telecommunications Services for Persons with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (CC Docket 90–571, FCC 93–104, adopted February 19, 1993, and released February 25, 1993). In the Report and Order and Request for Further Comments, adopted July 26, 1991, (56 FR 36729, August 1, 1991), the Commission adopted rules to implement the Americans with Disabilities Act of 1990 (ADA). The rules require each common carrier providing telephone voice transmission services to provide telecommunications relay services (TRS) not later than July 26, 1993, throughout the area in which it offers services. Carriers may provide services individually, through designees, through a competitively selected vendor, or in concert with other carriers. The Commission also fashioned a comprehensive set of rules which set forth terminology and definitions of TRS, prescribe operational, technical, and functional minimum standards of all TRS providers, and delineate the state certification process. Specifically, the Commission's rules require that TRS shall be capable of handling any type of call normally provided by common carriers. The burden of proving the infeasibility of handling any type of call is on the carriers. With regard to confidentiality, the Commission's rules require that, consistent with the obligations of common carrier operators, TRS communications assistants (CAs) are prohibited from disclosing the content of any relayed conversation regardless of content. Furthermore, the Commission, noting that the record was not adequate to determine a specific cost recovery mechanism, sought further comments containing specific proposals on interstate cost recovery.

In the Further NPRM adopted February 19, 1993, the Commission proposes rules tasking NECA with the responsibility for administering the shared-funding plan, but the Commission invites other proposals. Under the proposed rules, the Administrator's performance would be reviewed after an initial two year period.

Further Notice of Proposed Rulemaking

This is a nonrestricted notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined in section 601(3) of the Regulatory Flexibility Act. The Secretary shall send a copy of this order on reconsideration, second report and order and further notice of proposed rulemaking including the certification to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(A) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 5, 1993, and reply comments on or before April 19, 1993. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting documents with the reference number "CC Docket 90–571" on each document. If interested parties want each Commissioner to receive a personal copy of comments, interested parties must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, Federal Communications Commission, 1919 M Street, NW., Washington, DC. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Service, Inc. (ITS, Inc), 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 64

Communications Common Carriers, Handicapped, Individuals with Hearing and Speech Disabilities, Telecommunications Relay Services.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–4843 Filed 3–2–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 89–553; FCC No. 93–34]

Use of 200 Channels in 896–901/935–940 MHz Bands Allotted to the Specialized Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This docket proposes methods for licensing the 200 channels in the 896–901/935–940 MHz bands allotted to the Specialized Mobile Radio (SMR) Service in a combination of nationwide, regional, and local systems. This further notice is necessary to determine the most appropriate method of licensing these channels outside of the 46 Designated Filing Areas where systems have already been licensed. The proposals contained in this further notice will provide for the continued development of SMR services in the 900 MHz band. This further notice of proposed rule making was combined with a first report and order in this

proceeding. A summary of and information on the first report and order is published elsewhere in this issue.

DATES: Comments must be filed on or before April 23, 1993, and reply comments must be filed on or before May 10, 1993.

ADDRESSES: Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Sharkey, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's further notice of proposed rule making, PR Docket No. 89–553, FCC No. 93–34, adopted January 14, 1993, and released February 12, 1993. The full text of this further notice of proposed rule making is available for inspection during normal business hours in the Records Room of the Federal Communications Commission, room 239, 1919 M St., NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M St., NW., suite 140, Washington, DC, 20037, telephone (202) 857–3800.

Summary of Further Notice of Proposed Rule Making

1. This further notice of proposed rule making addresses issues related to further licensing the 200 channels pairs allotted to the Specialized Mobile Radio (SMR) service in the 896–901/935–940 MHz bands. The Commission allocated these channels to the SMR service on September 26, 1986. To expedite service to areas most in need, the 1986 Report and Order allocating the channels also established a two-phase licensing procedure. The Commission began licensing in accordance with the first phase (Phase I) in 1987. In 1989, however, the Commission adopted a notice of proposed rule making 55 FR 744, January 9, 1990, proposing to eliminate the planned second phase of licensing in favor of an alternative approach. This further notice continues to examine the most appropriate means of further licensing the 200 SMR channels.

2. Specifically, in the further notice the Commission requests additional comments on the allocation of the 200 channels among local, regional, and nationwide licenses. The Commission also requests comment on how the regions for regional licenses should be configured. The Commission proposes to create three nationwide licenses of 20 channels each; six regional licenses of 20 channels in each of the seven Regional Bell Operating Company regions; and allot the remaining 20 channels on a local basis in all areas of the country. The Commission proposes to use lotteries to select the licensees; however, if Congress grants the FCC auction authority the FCC may consider licensing nationwide and regional systems by competitive bidding. To discourage speculation, the Commission proposes strict entry criteria for nationwide and regional licenses. The Commission also proposes to initially restrict eligibility for nationwide applicants to entities that had a substantial presence in Phase-I markets and requested comments on whether a similar restriction would be appropriate for regional licenses. Finally, the Commission proposes that nationwide licensees be exempt from transmitting a station identifier and that all secondary sites of constructed by Phase-I licensees be granted primary status. This summary of proposed rule changes may not be all inclusive. Parties interested in a complete description of proposed changes should consult the full text of the further notice of proposed rule making available in the FCC Dockets Center or for purchase from ITS, Inc. as described above.

Further Initial Regulatory Flexibility Analysis

3. *Reason for action.* The changes, both proposed and adopted herein, to part 90 of the Commission's Rules will enhance use of the 200 channels allocated to the SMR service in the 900 MHz band. The new rules will allow licensees more flexibility, both geographically and operationally, to provide innovative, diverse services to land mobile users and will help create a 900 MHz SMR service distinct from the 800 MHz SMR service.

4. *Objectives.* The Commission seeks to promote development of a competitive and innovative SMR service in the 900 MHz band. Such a service will provide valuable new advanced communications options to the public.

5. *Legal Basis.* The legal basis for these rule changes is found in sections 4(i), 303(g), 303(r), and 331(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(g), 303(r), and 332(a).

6. *Reporting, recordkeeping, and other compliance requirements.* Regional applicants must demonstrate that they have sufficient net assets to construct 40 percent of the proposed regional system and operate the system for two years. Nationwide applicants must demonstrate that they have sufficient net assets to construct 40 percent of the proposed system and operate the system for four years.

7. *Federal rules which overlap, duplicate or conflict with these rules.* None.

8. *Description, potential impact, and number of small entities involved.* Many small entities could be positively affected by this proposal because additional communications options would be made available to them. The number of small entities that will be affected is unknown. Additionally, expanded service opportunities will generate a demand for new communciations equipment, a benefit for equipment manufacturers. An initial regulatory flexibility analysis was prepared for the notice of proposed rule making in this proceeding. That analysis anticipated that our actions in this proceeding will have a positive effect on a number of small and large businesses. We did not receive any comments that specifically addressed our Initial Regulatory Flexibility Analysis.

9. *Any significant alternatives minimizing the impact on small entities consistent with the stated objectives.* This Further Notice solicits comments on a variety of alternatives. Additionally, all significant alternatives presented in response to the notice in this proceeding have been addressed in this further notice of proposed rule making. This item is intended to minimize the regulatory burdens to our licensees, many of whom may be considered small business entities.

Paperwork Reduction

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M St., NW., suite 140, Washington, DC, 20037, telephone (202) 857–3800. Persons wishing to comment on this collection of information should direct their comments to Jonas Niehardt, (202) 395–4814, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, Information Resources Branch, Office of Managing Director, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0517 and 3060–0518.

Title: Amendment of parts 2 and 90 of the Commission's rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and 935–940 MHz Bands Allocated to the Specialized Mobile Radio Service.

Action: New collection.

Respondents: State or local governments, business or other for profit entities, non-profit institutions, and small business or organizations.

Estimated Annual Burden: The item requires new reporting requirements which will impose 360 total burden hours for information to be filed as part of the original applications, 4.5 total hours for the three nationwide licensees to file system status reports at 4, 6, and 10 years after the initial license is granted and every 10 years after that, and 67.5 total hours for the 6 licensees in each of seven regions to file reports at 2, 5, and 10 years after the initial license is granted.

Estimated frequency of response. For nationwide licensees: At 4, 6, and 10 years after the initial license is granted and every 10 years after. For regional licensees: At 2, 5, and 10 years after the initial license is granted, and every 10 years after that.

Needs and uses. Periodic reports are required to ensure efficient use of the spectrum and to confirm that licensees have met the minimum construction requirements that their licenses are conditioned upon.

List of Subjects in 47 CFR Part 90

Business and industry, Communications equipment, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–4736 Filed 3–2–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

49 CFR Part 23

[Docket No. 48478; Notice 93–10]

RIN 2105–AB92

Participation by Disadvantaged Business Enterprise in Department of Transportation Programs

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Extension of comment period.

SUMMARY: The Department is extending the comment period on its notice of proposed rulemaking to amend its disadvantaged business enterprise (DBE) regulation. The NPRM proposed changes in a number of provisions of the DBE rule. The extension is in response to requests from interested parties for additional time to review the proposed rule and formulate comments.

DATES: Comments are requested by April 8, 1993. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. 48478, Department of Transportation, 400 7th Street, SW., room 4107, Washington, DC 20590. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD).

SUPPLEMENTARY INFORMATION: The Department of Transportation published a notice of proposed rulemaking (NPRM) on December 9, 1992 (57 FR 58288) to amend its disadvantaged business enterprise (DBE) rule (49 CFR part 23). The proposed amendments would tighten the structure of the rule, improve administrative procedures, provide for better coordination of guidance from the Department, clarify certification standards, and add new DBE program elements. The original 90-day comment period for this NPRM would end March 9, 1993.

The Department has received a number of written requests from commenters, particularly transit authorities and DBE firms, for additional time to review the NPRM and to formulate comments on the proposal. Department staff have also received a number of informal comments and inquiries at meetings and in phone calls asking to extend the comment period. The Department believes that it would be beneficial to extend the comment period for a time, in order to ensure that it will have the benefit of thoughtful comments from the widest possible spectrum of interested parties. For these reasons, the Department has determined that a 30-day extension is appropriate. The comment period will now close on April 8, 1993. As is typically the case with DOT rulemakings, late-filed comments will be considered to the extent practicable.

Issued this 25th day of February, 1993 at Washington, DC.

Rosalind A. Knapp,

Acting General Counsel.

[FR Doc. 93–4879 Filed 3–2–93; 8:45 am]

BILLING CODE 4910–62–M

Research and Special Programs Administration

49 CFR Parts 171, 172, and 173

[Docket No. HM–181G; Notice No. 93–5]

RIN 2137–AC36

Infectious Substances; Notice of Public Hearing and Advance Notice of Proposed Rulemaking

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public hearing and advance notice of proposed rulemaking.

SUMMARY: On December 20, 1991, RSPA published a final rule in the **Federal Register** amending the Hazardous Materials Regulations (HMR), including those for infectious substances. RSPA received two petitions for reconsideration to revise the infectious substance provisions in the December 1991 final rule and a number of comments and exemption applications which raised issues for which RSPA needs additional public input. In this document, RSPA is announcing a public hearing to gain more detailed information on the need for additional regulatory action concerning infectious substances in light of petitions and comments received.

DATES: *Comments.* Written comments concerning this notice must be submitted on or before April 20, 1993.

Public Hearing. A public hearing will be held from 9:30 a.m. to 5 p.m. on March 17, 1993, in Washington, DC.

ADDRESSES: *Comments:* Address comments to Dockets Unit (DHM–30), Office of Hazardous Materials Safety, RSPA, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the docket (HM–181G) and notice number (Notice No. 93–5) and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., Monday through Friday,

except on public holidays when the office is closed.

Public hearing. The March 17, 1993 public hearing will be held at the Regional Office Building Auditorium, room 1041, first floor, National Capital Region, General Services Administration, 7th and D Streets, SW., Washington, DC 20407.

Any person wishing to present an oral statement at the public hearing should notify Eileen Martin, by telephone or in writing, by March 15, 1993. Each request must identify the speaker; organization represented, if any; daytime telephone number; and the anticipated length of the presentation, not to exceed 10 minutes. Written text of the oral statement should be presented to the hearing officer prior to the oral presentation. The hearing may conclude before 5 p.m. if all persons wishing to testify have been heard.

FOR FURTHER INFORMATION CONTACT: Eileen Martin or Jennifer Posten, Office of Hazardous Materials Standards, (202) 366–4488, or George Cushmac, Office of Hazardous Materials Technology, (202) 366–4545, Research and Special Programs Administration, 400 Seventh St., SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. History of Department of Transportation (DOT) Regulation of Etiologic Agents/Infectious Substances

A. Regulation Prior to 1991

The Hazardous Materials Regulations Board (Board; a predecessor to the RSPA) adopted a final rule under Docket HM–142 on September 30, 1972 (37 FR 20554), that added "etiologic agents" to the list of hazardous materials regulated by the Secretary. The final rule at 49 CFR 173.386(a)(1) defined an etiologic agent as

> a viable microorganism, or its toxin, which causes or may cause human disease, and is limited to those agents listed in 42 CFR 72.25(c) of the regulations of the Department of Health, Education, and Welfare.

(The Department of Health, Education, and Welfare (HEW) is now the Department of Health and Human Services (DHHS).) The final rule at 49 CFR 173.387 also specified packaging requirements for etiologic agents, and excepted, at 49 CFR 173.386(d), from DOT regulation "diagnostic specimens" and "biological products," which were subject to regulation by HEW. The final rule was adopted after notice and opportunity to comment (36 FR 25163, December 29, 1971).

On November 29, 1972, after receiving two petitions for reconsideration and several comments, the Board proposed in the **Federal Register** (37 FR 25243) to except from DOT regulation cultures of etiologic agents of less than 50 milliliters (1.666 fluid ounces) in one package. The petitions stated that such an exception was necessary to allow physicians in rural areas to transport cultures to laboratories on passenger-carrying aircraft, rather than by slower surface transportation which, in turn, promotes health safety. The petitions added that cultures of etiologic agents may perish if in transportation too long. The Board adopted the proposal as final on March 29, 1973 (38 FR 8161). One commenter objected to excepting such quantities of etiologic agents from all regulation. The Board noted, however, that quantities of etiologic agents excepted from DOT regulation would still be subject to HEW labeling and packaging regulations under 42 CFR 72.25(c). The March 29, 1973 rule also adopted incident notification requirements for etiologic agents, as proposed on July 22, 1972 (37 FR 14728).

B. The 1988 Notice of Proposed Rulemaking (NPRM) Under Docket HM–142A

On November 10, 1988, RSPA proposed (Docket HM–142A, 53 FR 45525) to revise the definition of "etiologic agent," remove the 50 milliliter (ml) exception, and align the per package quantity limits of etiologic agents aboard aircraft with the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). RSPA proposed broadening the definition of "etiologic agent" to include, in addition to etiologic agents listed by DHHS in 42 CFR 72.3, any agent that poses a similar degree of hazard, such as the acquired immune deficiency syndrome (AIDS) virus. The DHHS has not updated the list in 42 CFR 72.3 since July 1, 1980 (45 FR 48627). On March 2, 1990 (55 FR 7678), DHHS proposed to delete the list from its regulations but a final rule has not been published. RSPA noted that the proposed definition was not as broad as the definition for infectious substances (Division 6.2) contained in the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) and international regulations based on the UN Recommendations, such as the ICAO Technical Instructions.

C. January 3, 1991 Final Rule Under Docket HM–142A

On January 3, 1991, RSPA published a final rule in the **Federal Register** (56 FR 197) under Docket HM–142A. The final rule (1) adopted a revised definition of "etiologic agent," (2) removed the 50 ml exception, and (3) clarified quantity limitations for etiologic agents transported aboard aircraft. "Etiologic agent" was defined to mean

> a viable microorganism, or its toxin, which is listed in 42 CFR 72.3 of the regulations of the [DHHS] or which causes or may cause severe, disabling or fatal human disease.

The definition adopted differed from the proposed definition in response to commenters who suggested that the language of the definition be modified to better reflect agents that may pose an unreasonable risk to health and safety during transportation. Accordingly, the wording was revised to include other agents that cause or may cause severe, disabling or fatal human diseases in humans in addition to the agents listed in 42 CFR 72.3 of the DHHS regulations. In response to comments, RSPA indicated in the preamble that it believed most medical waste is composed of material that does not contain etiologic agents either because it does not contain any infectious material or because the infectious material does not meet the regulatory definition of etiologic agent. RSPA also stated that, in many cases, if medical waste is known or suspected to contain an etiologic agent, it is treated on-site to destroy the agent by using a method such as incineration, autoclaving, or treatment with disinfectants. However, RSPA clearly stated that "* * * if an infectious waste that contains an etiologic agent is offered for transportation, it must conform with the requirements in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–80) for etiologic agents" (56 FR 198). As stated earlier, the final rule also removed the 50 ml exception, as proposed in 1988. The January 3 preamble responded to numerous comments received on the 50 ml proposal and comprehensively discussed the reasons for this action.

The January 3 preamble also discussed the relationship of Docket HM–142A to Docket HM–181—the Performance-Oriented Packaging Standards. In that discussion, RSPA stated that HM–181 had proposed to replace the term "etiologic agent" with "infectious substance" for consistency with international regulations. However, RSPA noted that the scope of changes proposed under HM–181 was so extensive that RSPA was unsure when that proposal would be adopted as final. As a result, RSPA proceeded with a separate rulemaking under Docket HM–

142A (an abbreviated version of the infectious substance provisions in HM–181) to ensure that the risks posed by etiologic agents were adequately regulated under the HMR. RSPA intended the provisions under HM–142A to serve as a transition until the provisions of HM–181 became effective. Both final rules were published at approximately the same time. However, the initial effective date for HM–142A was February 19, 1991, and the effective date for HM–181 was October 1, 1991. Although HM–142A was to become effective before HM–181, RSPA encouraged shippers to implement the HM–181 provisions as soon as practicable.

D. Performance-oriented Packaging Standards—HM–181

In 1987, RSPA proposed to align the classification, packaging, and hazard communications provisions in the HMR with the UN Recommendations and the ICAO Technical Instructions. The May 5, 1987 NPRM (Docket HM–181, 52 FR 16482) proposed to replace the term "etiologic agent" with the term "infectious substance" and adopt the INFECTIOUS SUBSTANCE label (52 FR 16700). RSPA proposed to include "infectious substance" in UN classification Class 6, Division 6.2. "Infectious substance" was proposed to mean

> a viable microorganism, or its toxin, which causes or may cause human disease, and is limited to those agents listed in 42 CFR 72.3 of the regulations of the [DHHS]. The terms "infectious substance" and "etiologic agent" are synonymous.

(52 FR 16700).

On December 21, 1990, RSPA issued a final rule under Docket HM–181 (55 FR 52402) which comprehensively revised the HMR with respect to hazard communication, classification, and packaging requirements. "Infectious substance" was defined in 49 CFR 173.134(a)(1) to mean

> a viable microorganism, or its toxin, which causes or may cause disease in humans or animals, and includes those agents listed in 42 CFR 72.3 of the regulations of the [DHHS] or any other agent that has the potential to cause severe, disabling or fatal disease. The terms "infectious substance" and "etiologic agent" are synonymous.

RSPA had planned to issue a final rule under Docket HM–142A (etiologic agents) before issuing the final rule under Docket HM–181. However, the final rule under HM–181 was issued on December 21, 1990, and the final rule under HM–142A was not issued until January 3, 1991. As explained in the preamble to the January 3, 1991 rule, the comments on HM–142A were considered in the decisionmaking process for HM–181, and reflected in the December 21, 1990 rule. For example, not only did the December 1990 definition of "infectious substance" adopt the broader definition of etiologic agent proposed in 1988, it also reflected RSPA's consideration of comments suggesting that the language be modified to better define agents that may pose an unreasonable risk to health and safety during transportation.

A document incorporating editorial and substantive revisions to the December 1990 final rule was published on December 20, 1991 [56 FR 66124]. (These final rules are referred to jointly herein as Docket HM–181.) The revisions contained in the latter document were primarily in response to petitions for reconsideration received on the December 21, 1990 final rule and also made editorial and technical corrections to the December 21, 1990 final rule, and to the January 3, 1991 final rule.

E. January 3, 1991 Final Rule and Partial Response to a Petition For Reconsideration

A petition for reconsideration filed by the National Solid Wastes Management Association (NSWMA) recommended that RSPA revise the definition of infectious substances (etiologic agents) to exclude solid waste or medical waste as defined in 40 CFR 259.10 of the Environmental Protection Agency's (EPA's) regulations. To allow adequate time to evaluate the petition, RSPA delayed the effective date of the January 3 rule to September 30, 1991 (February 22, 1991, 56 FR 7312). In a meeting to obtain clarification of the petition, NSWMA urged RSPA to reestablish the 50 ml exception for infectious substances. The NSWMA stated that RSPA's regulation was inconsistent with the approach taken by EPA, and would increase the costs of transporting medical waste for the regulated community. The NSWMA stated that, contrary to RSPA's preamble discussion that most medical waste did not contain etiologic agents or was treated on-site to destroy the agent before being transported for disposal, substantial quantities of untreated medical waste are transported off-site. This information was the first indication RSPA had received from any commenter that removal of the 50 ml exception would affect a larger segment of the industry than had previously been indicated.

On September 18, 1991 (56 FR 47158), RSPA incorporated HM–142A into HM–181 and, in partial response to NSWMA's request, extended the 50 ml exception from October 1, 1991, to October 1, 1992. (The September 1991 rule also required that packages exceeding the 50 ml exception comply on October 1, 1991, with the revised hazard communication (shipping paper, marking, and labeling) and classification requirements in Docket HM–181). RSPA anticipated that this extension would provide enough time to fully respond to NSWMA's comments in the final correction document to HM–181 that was being prepared. However, NSWMA submitted a September 26, 1991 letter asking that RSPA clarify that the January 3, 1991 and September 18, 1991 final rules "apply to only isolated cultures or stocks such as clinical laboratory specimens and not to 'medical waste' as defined in 40 CFR 259.30(a) and 'mixtures' as defined in 40 CFR 259.31." In essence, NSWMA was requesting clarification that the HMR do not apply to medical waste containing any amount of an infectious substance. In order to allow RSPA additional time to carefully review NSWMA's substantive concerns, RSPA again extended the compliance transition date for all new requirements for infectious substances until October 1, 1992 (October 1, 1991, 56 FR 49830).

F. December 20, 1991 Final Rule

In the December 20, 1991 final rule responding to petitions for reconsideration in Docket HM–181, RSPA agreed with NSWMA that medical waste containing an infectious substance should be treated differently than other infectious substances. RSPA had no basis, however, to except from regulation medical waste containing an infectious substance, and stated "* * * since the majority of these wastes are untreated and, thus, may potentially contain infectious substances, RSPA strongly believes that the public and transport personnel be protected from the hazards of these materials during transportation" (56 FR 66142). Accordingly, RSPA revised the regulations (49 CFR 173.197 (1991)) to specify "* * * less rigorous requirements for infectious substances that are 'regulated medical wastes'" (56 FR 66131). RSPA observed that EPA's regulations on medical waste in 40 CFR part 259 applied in only five States and had expired on June 22, 1991, with the end of a 2-year demonstration program that EPA had established under the Medical Waste Tracking Act of 1988 (MWTA; Pub.L. 100–582). To provide less rigorous requirements for medical waste containing infectious substances, RSPA turned to the expired EPA regulations as a model that could be adapted, with some modifications, to

the HMR. RSPA wanted to take advantage of the technical expertise and knowledge of the medical waste industry that EPA had developed during its demonstration project under the MWTA. Accordingly, RSPA adopted a definition of "regulated medical waste" (to distinguish between all medical waste and medical waste containing an infectious substance) and specified packaging requirements for regulated medical waste (RMW) that were consistent with those contained in the expired EPA regulations.

RSPA thus created a subcategory of infectious substances—infectious substances that are contained in or constitute medical waste. The threshold question to be addressed is whether an infectious substance is being offered for transportation or transported. If so, the infectious substance must be labeled, packaged, and offered for transportation in accordance with the HMR. If the infectious substance is also medical waste, or is contained in medical waste, then the shipper may use the less rigorous packaging requirements that are provided for RMW.

If RSPA had not provided this measure of regulatory relief in response to petitions, all infectious substances, regardless of how they are generated, would be classified and described as Division 6.2 materials, and would be subject to the full extent of regulation provided in the HMR.

G. Petitions for Reconsideration and Comments Received in Response to the December 20, 1991 Rule

Following issuance of the December 1991 rule, RSPA received two additional petitions for reconsideration and a number of requests for clarification and additional comments concerning the provisions for infectious substances and regulated medical waste. The petitioners requested a stay in the effectiveness of the final rule and the reopening of the rulemaking for additional public input.

An issue of particular concern to petitioners and commenters was the HMR's potential overlap or inconsistency with other Federal regulations governing infectious substances. Federal agencies such as the Occupational Safety and Health Administration (OSHA) of the Department of Labor (DOL), the Centers for Disease Control (CDC) and the Food and Drug Administration (FDA) of the DHHS, the United States Postal Service (USPS), and the Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture (USDA) have regulations applying to infectious substances/etiologic agents.

OSHA's regulations under Docket H–370 (56 FR 64004), "Occupational Exposure to Bloodborne Pathogens," cover issues dealing with worker exposure to potentially infectious materials. CDC administers regulations under 42 CFR Part 72 concerning the interstate shipment of etiologic agents. USPS recently published a final rule (57 FR 29028) concerning the mailability of sharps. USPS requires DOT labels, packagings designed and constructed in accordance with 49 CFR, absorbent material, and a manifest for used sharps and other medical devices shipped in the mail. APHIS regulates biological products derived from animal blood and tissue by prescribing permits, packaging, and labeling under 9 CFR parts 102–104.

Both OSHA and CDC require packaging and labeling for infectious substances/etiologic agents which differ from those of the HMR. Neither OSHA nor CDC require testing or certification of packagings. However, OSHA's definition for infectious substances is broader than RSPA's in that it assumes all human blood and human body fluids are infectious unless proven otherwise. The HMR's definition for infectious substances includes materials known or suspected to contain infectious substances. OSHA uses the term "bloodborne pathogens and other potentially infectious substances" and CDC uses the term "etiologic agents." In HM–181, RSPA adopted "infectious substances" in place of "etiologic agents," in part for consistency with international standards. These materials are referred to herein generically as infectious substances. Perhaps the most obvious overlap of the various infectious substance regulations is the fact that each agency/organization involved requires one or more different labels on packages.

In addition to suggesting the need for a uniform Federal approach to regulating infectious substances, petitioners and commenters have indicated that there may be a need to revise certain definitions and packaging provisions adopted under Docket HM–181. RSPA is also faced with evaluating the merits of aligning the HMR with the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations). The HMR embody performance-oriented packaging standards, hazard communication standards, and classification criteria generally consistent with the UN Recommendations. These and other issues are further addressed in the section of this notice entitled "Request for Comments."

H. Transitional Provisions

RSPA had not completed its evaluation of the petitions for reconsideration as of October 1, 1992, the date on which the new HM–181 provisions for infectious substances were to take effect. On October 1, 1992, RSPA published a final rule (57 FR 45442) extending this transition date, found at 49 CFR 171.14(b)(3), to April 1, 1993. Based on the issues raised in this document, it is apparent that even more time will be needed in order to provide for notice and opportunity to comment and, if warranted, to develop additional rulemaking documents. Therefore, elsewhere in today's **Federal Register**, RSPA is further extending the transition date to January 1, 1994.

During the transition period, a person may comply with either the applicable "old" requirements of the HMR, i.e., those in effect on September 30, 1991, or the current requirements adopted under HM–181. A person who was not subject to the old requirements, but is subject to the new requirements, has until expiration of the transition period to comply with the new requirements. For example, a material which meets the new "infectious substance" definition but not the old "etiologic agent" definition, or which qualifies for the old 50 milliliter exception, may be shipped in accordance with the new requirements, but compliance is not mandatory until January 1, 1994. A person who was subject to the old requirements and is subject to the new requirements must comply with either the old or the new requirements.

II. Request for Comments

RSPA is requesting comments in response to the following questions and recommendations on possible regulatory changes to the requirements adopted under HM–142A and HM–181. Further, RSPA is conducting the public hearing to discuss these issues. RSPA's aim is to ensure that its regulations (1) adequately protect the public, transport workers, and the environment from the hazards posed by infectious materials; (2) do not impose undue burdens on the regulated industry; and (3) do not unnecessarily overlap or conflict with the regulations of other Federal agencies. Commenters are requested to present as much quantitative information as is available concerning costs and benefits attributable to the recommendations.

In the following questions, the provisions adopted under HM–181 are referred to as the "current" regulations, even though they may not be in effect due to transitional provisions.

A. Consistency With Other Regulations

1. Agencies such as RSPA, OSHA, USPS, APHIS, FDA and CDC regulate infectious substances. To what extent do overlapping Federal regulations affect transportation costs and create other burdens? What regulatory changes are recommended to ease the movement of these materials in transportation while still providing an adequate level of safety?

2. OSHA's "BIOHAZARD" label, CDC's "BIOMEDICAL MATERIAL" label, and DOT's "INFECTIOUS SUBSTANCE" label may all appear on packages in transportation, sometimes with two or more different labels on the same package. Does the appearance of multiple labels on packages cause confusion to transport workers or emergency response personnel? Considering each agency's differing definitions for infectious substances, are there practicable alternatives to multiple labeling?

3. The infectious substance definition in the HMR is partially based on the sixth edition of the UN Recommendations for the Transport of Dangerous Goods. For consistency with the UN Recommendations, substances infectious to animals were included in the definition. Should the HMR address substances infectious to animals for transportation purposes? Are these substances adequately addressed in regulations of other agencies such as those of the USDA?

4. RSPA is considering development of a proposal to incorporate the seventh revised edition of the UN Recommendations into the HMR. The seventh edition of the UN Recommendations differs from the HMR in that it (1) modifies the definitions of biological products and diagnostic specimens by including those that may contain infectious substances; (2) excludes toxins from the definition of infectious substances; and (3) includes infectious genetically modified organisms and microorganisms. Should the infectious substance regulations of the HMR conform to the seventh revised edition of the UN Recommendations?

5. A CDC report defines the term "universal precautions" as an approach to infection control that treats all human blood and certain human body fluids as if known to be infectious. This approach is utilized internationally and domestically by agencies such as OSHA and USPS. What percent of medical waste transported off-site is known to be infectious? How much more waste would be covered under the universal precautions approach? Is there a practicable means of differentiating between waste which can reasonably be expected to be infectious versus waste which can be expected not to be infectious? Should RSPA adopt universal precautions to be consistent with other agencies' infectious substance regulations?

6. Under OSHA's bloodborne pathogens rule, contaminated laundry must be properly packaged and each package must be labeled or color-coded prior to shipment. Under the HMR, laundry and other reusable materials containing infectious substances are not specifically addressed. In the absence of specific provisions or exceptions, they are subject to the same hazard communication and packaging requirements as cultures and stocks of infectious substances. Should RSPA except certain reusable materials, such as laundry and surgical instruments, from the HMR, should these items be addressed in a manner similar to OSHA's regulations, or should the HMR remain unchanged?

7. The CDC has proposed to remove the list of agents in 42 CFR 72.3 and replace it with a general definition: "*Etiologic agent* means a microbiological agent or its toxin that causes, or may cause, human disease." The HMR currently references the CDC list in the definition of infectious substances in 49 CFR 173.134. If CDC adopts the new definition, it would apply to many more materials than does DOT's definition, which limits disease-causing agents to those which are "severe, disabling or fatal." Should RSPA consider adopting the broader definition proposed by CDC? Are estimates available as to the number of additional infectious substance and regulated medical waste shipments that would be subject to the HMR if this were done?

8. Biological products and diagnostic specimens are currently excepted from regulation (unless they become regulated medical waste) under the HMR even though many of them contain infectious substances. The CDC defines "biological products" and "clinical specimens" similar to the HMR definitions. However, CDC provides packaging and labeling requirements for these materials. FDA, APHIS, and OSHA also have regulatory requirements applicable to biological products. For example, OSHA requires packaging and labeling for potentially infectious biological products and clinical specimens. Should RSPA remove the exception for biological products and diagnostic specimens that contain infectious substances under the HMR? Should RSPA exclude waste biological products and diagnostic specimens from regulation? Should RSPA adopt the term "clinical specimens"? What hazard communication and packaging standards, if any, should apply to biological products and diagnostic/clinical specimens under the HMR?

9. Currently under the HMR, untreated cultures and stocks of infectious substances transported for disposal would meet the definition for regulated medical waste. As such, they are subject to less rigorous packaging and hazard communication requirements than those applicable to non-waste cultures and stocks of infectious substances. Commenters requested that RSPA remove this provision and subject all cultures and stocks, including waste, to the more stringent infectious substance requirements, particularly those for packaging in 49 CFR 173.196, because of their high level of hazard. To what extent are waste cultures and stocks transported off-site without being rendered harmless (i.e., treated so that they are no longer capable of causing severe, disabling, or fatal disease)? Should these cultures and stocks be transported in the same manner as non-waste, i.e., subject to the packaging provisions of § 173.196?

B. Non-bulk packagings

10. RSPA is aware that packages of medical waste may undergo rough handling in transportation. However, commenters have stated that some of the performance tests in subpart M of part 178 of 49 CFR are irrelevant to the transportation of regulated medical waste in non-bulk packagings. Which tests are irrelevant and why?

11. The HMR require use of UN performance-based packagings which meet a Packing Group II performance level for regulated medical waste. UN packagings are required for other hazardous materials which pose an equivalent or lesser degree of potential hazard than regulated medical waste. What justification, if any, exists for relaxing packaging requirements for these materials?

12. For the purposes of packaging, medical waste may be differentiated as liquids, solids, or sharps. (Sharps are described in 49 CFR part 173, appendix G.) Are there different levels of risk associated with these forms? If so, should different packing group levels or different packaging standards apply?

13. Medical waste may often include both liquids and solids, with the liquids either absorbed in the solids or remaining as residues in bottles, bags, needles, or other containers. Under the provisions of the HMR, if there are any

liquid contents to be packaged, then only a UN packaging tested and certified for liquids may be used. This can necessitate the testing of many combinations of inner and outer packagings. Under what conditions, if any, should RSPA permit a packaging tested for solids to be used for regulated medical waste containing liquids? For example, should RSPA permit small amounts of liquid residues to be packaged as a solid, provided the inner packaging also contains absorbent waste materials in sufficient quantity to absorb the total volume of waste liquid residue?

14. Under the HMR, a plastic film bag (generally known as a "red bag") is authorized for regulated medical waste only as an inner packaging inside a rigid outer packaging, such as a fiberboard box. The completed package must be capable of withstanding Packing Group II performance levels. The thickness of the red bag is not specified. Is there a need to specify thicknesses for red bags of various capacities and, if so, what should they be?

15. What is the average or typical weight of a plastic film red bag containing medical waste? What is the maximum weight that might be found in transportation?

16. Presently under the HMR, the size of a sharps container may be as great as 400 kilograms maximum net mass for solids or 450 liters maximum capacity for liquids. As a practical matter, much smaller containers (e.g., 17 kilograms; 19 liters) are in use. In the interest of safety, should RSPA further restrict container size for sharps and, if so, to what degree? Is it practical to drain sharps containers of their liquid contents prior to transportation? Do any state or local laws require sharps to be disinfected (e.g., soaking needles in liquid bleach)? Should all sharps containers meet the requirements of the HMR applicable to packagings for liquids?

C. Bulk Packagings

17. The HMR prohibit the bulk transportation of regulated medical waste. However, RSPA is aware that medical waste has been transported in bulk packagings and currently has several applications for exemptions pending to permit the use of bulk packagings under the HMR. Generally, these bulk packagings are covered bins, constructed of polyethylene and ranging from about 450 to 850 liters (119 to 225 gallons) in capacity, into which red-bagged material and sharps receptacles are placed with no other intermediate containment. There are also roll-on-roll-off containers and van-type transport vehicles which have been used for the bulk transport of medical waste. Should RSPA revise the HMR to provide for the transport of regulated medical waste in bulk packagings?

18. For sizes where it might be practicable, such as for packagings in the 450 to 800 liter range, should RSPA authorize the use of bins which meet performance requirements applicable to non-bulk packagings?

19. Most of the covered bins which have been used for medical waste are seamless on their bottoms and sides, making them leakproof when in an upright position. Should RSPA require that bins be seamless or have fully sealed bottom and side seams? Most bins have top closures which are not leakproof, but are held closed by positive means (i.e., are held in place by other than gravity or friction). Is it necessary and practicable to require that top closures be leakproof and have positive means of closure or would operating controls such as "must be transported in a manner that will ensure they remain in an upright position" suffice in place of such a requirement?

20. Most bins used for wastes would not withstand the hydrostatic pressure test currently required for non-bulk packagings used for liquids. Under what circumstances, if any, should RSPA relax the hydrostatic test requirement for bulk packagings intended to contain liquid, infectious medical waste?

21. If RSPA were to authorize bulk size packagings (i.e., bins over 800 liters capacity and van-type vehicles or dump-body vehicles), what standards should apply? Should side and bottom seams be fully sealed? Should plastic film red bags be required as an intermediate packaging when infectious medical waste is transported? Should standards address ease of cleaning and provision of sumps to retain leakage from intermediate packaging?

D. Scope

22. Is infectious medical waste imported to or exported from the U.S.? If so, what are the circumstances of these shipments (e.g., why, where, what types of materials, mode of transport)?

23. To what extent is infectious medical waste transported by modes other than highway?

24. Some commenters suggested that of an estimated 158 million tons of U.S. municipal solid waste produced annually, between 0.3 percent to 1.0 percent is medical waste. Some sources suggest that approximately 15% of all medical waste actually contains infectious substances. Are these estimates accurate? Are they consistent with known operating experience?

25. Some commenters have stated that the risk of infection from medical waste comes almost entirely from sharps and is negligible for other wastes. Is this an accurate assessment? Are there objective criteria or statistics to support this assessment?

26. It has been suggested that 5% of the infectious medical waste in transportation contains sharps. Is this a reasonable estimate? If not, what is a better percentage?

27. What percentage of infectious substances offered for transportation off-site by hospitals, clinics and similar entities is intended for reuse or treatment rather than for disposal?

28. To what extent is infectious medical waste treated on-site to eliminate the risks posed by infectious substances? What percent of the U.S. hospital population treats its medical waste on-site using methods such as chemical decontamination, autoclaving, incineration, or irradiation? How do smaller generators of medical waste, e.g., medical offices and clinics, typically treat or dispose of their waste?

29. It has been stated that costs are between $0.04 to $0.06 per pound for disposal of non-infectious medical waste and that prices of up to 10 times this amount are charged for infectious medical waste. How accurate are these estimates?

III. Rulemaking Analyses and Notices

A. Executive Order 12291

The effect of this advance notice of proposed rulemaking does not meet the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. It is a significant rule under the regulatory procedures of the Department of Transportation (44 FR 11034) because of potential impacts on medical facilities. This advance notice of proposed rulemaking does not require a Regulatory Impact Analysis, or an environmental assessment or impact statement under the National Environmental Policy Act (42 FR 4321 et seq.) A preliminary regulatory evaluation will be prepared if further rulemaking action is warranted.

B. Executive Order 12612

This advance notice of proposed rulemaking has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism").

The Hazardous Materials Transportation Act (49 App. U.S.C. 1801–1819) contains express preemption provisions (49 App. U.S.C. 1811) that preempt a non-Federal

requirement if (1) compliance with both the non-Federal and the Federal requirement is not possible; (2) the non-Federal requirement creates an obstacle to accomplishment of the Federal law or regulations; or (3) it is preempted under section 105(a)(4), concerning certain covered subjects, or section 105(b), concerning highway routing. Covered subjects include:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of unintentional release in transportation of hazardous material; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials. (49 App. U.S.C. 1804(a)(4)(A) and (B)).

This advance notice of proposed rulemaking addresses certain covered subjects. If rulemaking action leads to promulgation of a final rule, this rule would preempt any State, local, or Indian tribe requirements concerning covered subjects unless the non-Federal requirements are "substantively the same" (56 FR 20424, May 13, 1992) as the Federal requirement. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

Based on limited information concerning size and nature of entities likely affected, I certify that this advance notice of proposed rulemaking will not, if promulgated, have a significant impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act. This certification is subject to modification based on the merits of comments received.

Issued in Washington, DC, on February 26, 1993, under authority delegated in 49 CFR part 106, appendix A.

Robert A. McGuire,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93-4882 Filed 3-2-93; 8:45 am]

BILLING CODE 4910-60-P

49 CFR Part 195

[Docket No. PS-117; Notice 3]

RIN 2137-AB86

Transportation of a Hazardous Liquid in Pipelines Operating at 20 Percent or Less of Specified Minimum Yield Strength

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: By regulatory exception, the Federal pipeline safety standards governing hazardous liquid pipelines do not apply to pipelines operated at a stress level of 20 percent or less of the specified minimum yield strength (SMYS) of the pipe. In this Notice of Proposed Rulemaking (NPRM), the Research and Special Programs Administration (RSPA) proposes to revise the current exception and to apply the pipeline safety standards to certain pipelines operating at a stress level of 20 percent or less of SMYS. RSPA expects that this rulemaking will improve public safety and environmental protection by minimizing the possibility of accidents.

DATES: Comments must be received by May 3, 1993. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Send comments in duplicate to the Dockets Unit, room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8421 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: G. Joseph Wolf, (202) 366-4560, regarding the subject matter of this NPRM. Contact the Dockets Unit, (202) 366-4453, for copies of the NPRM or other docket material. Contact the Transportation Safety Institute, Pipeline Safety Division, 6500 South MacArthur Boulevard, Oklahoma City, OK 73125, (405) 680-4643, for a copy of 49 CFR part 195.

SUPPLEMENTARY INFORMATION:

Background

When the Federal pipeline safety regulations applicable to transportation of hazardous liquids by pipeline (49 CFR part 195) were issued in 1969, pipelines operated at a stress level of 20 percent or less of SMYS, hereafter referred to as low stress pipelines, were excepted from the regulations because they were thought to pose little risk to public safety. Since then, however, accidents that have occurred on low stress pipelines provide reasons to reconsider the exception. Recent failures of such pipelines and recommendations to revise their exception from regulation were described in the Advance Notice of Proposed Rulemaking (ANPRM) published on October 31, 1990 (Notice 1; 55 FR 45822). The ANPRM noted that RSPA would determine whether and to what extent to remove the exception. Based on data in the responses to the ANPRM, which indicate a favorable benefit to cost ratio, RSPA is proposing to regulate certain low stress pipelines.

Current Requirements

Section 195.1(b)(3) provides that Part 195 does not apply to "Transportation of a hazardous liquid through pipelines that operate at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe." The pipelines excepted are those steel pipelines in which the internal operating pressure results in a stress level of the pipe that does not exceed 20 percent of SMYS at any point along the length of the pipeline.

Information Acquisition

Because low stress pipelines have been excepted under § 195.1(b)(3), owners and operators are excepted from filing accident reports with RSPA pursuant to subpart B of part 195.

Consequently, RSPA lacked accident data about such pipelines. However, the ANPRM contained a questionnaire for the purpose of gathering information to make a decision regarding rulemaking. The owners or operators of hazardous liquid pipelines operated at 20 percent or less of SMYS and not otherwise excepted under § 195.1(b) were requested to complete the questionnaire for each such pipeline and return it. RSPA requested the information in the questionnaire to estimate the number and mileage of low stress pipelines, to perform a regulatory impact analysis (including a cost-benefit analysis), and to develop and consider alternatives that would ensure the safe operation of low stress pipelines.

In addition, state and local governments and other interested parties were invited to provide comments and available information about low stress pipelines located within their jurisdictions. Comments received provided the data to develop the proposals in this NPRM.

Data Summary

RSPA received 50 responses to the ANPRM: 40 from pipeline operators, 2 from other representatives of the pipeline industry, 5 from government representatives, and 3 from unaffiliated members of the public. The data furnished in the responses were tabulated in computerized format. Using the computerized data and the narrative comments in the responses, the Volpe National Transportation Systems Center (VNTSC) of RSPA prepared a draft regulatory evaluation titled "Economic Evaluation of Regulating Certain Hazardous Liquid Pipelines Operating at 20% or Less of Specified Minimum Yield Strength."

Nine of the 40 pipeline operators who submitted comments furnished no data. The other 31 operators reported the operation of 1555 individual pipelines, a total of more than 3,600 miles, operating at a stress level of 20% or less of SMYS. The largest number of these are classified as interfacility lines (lines between petrochemical facilities) with 996 lines (939 miles) reported. Also reported were 272 trunk pipelines (1,816 miles), 153 gathering lines (564 miles), 116 offshore pipelines (463 miles, estimated), and 105 delivery pipelines (126 miles). Interfacility and delivery lines are described later. For 12 pipelines, information furnished was inadequate for classifying the lines. Based on the data submitted, regulated hazardous liquid pipeline miles would increase an estimated 5 percent to 157,100 miles if low stress pipelines were regulated to the extent proposed in this NPRM.

The sum of the miles of pipelines in high risk areas as defined in the ANPRM exceeded the total miles of pipelines reported because many pipeline lengths are in more than one kind of higher risk area. For those pipelines for which risk or absence of risk was reported, the sum of the total length of all pipelines that traverse higher risk areas was 1,045 miles. Of those 1,045 miles, 349 miles (33 percent) traverse populated areas, and 101 miles (10 percent) cross navigable waters, some both traversing populated areas and crossing navigable waters.

Comments and Analysis

RSPA anticipated that there were three categories of low stress pipelines—interfacility lines moving hazardous liquids between petrochemical facilities, gathering lines, and trunk (long distance transportation) lines. Commenters to the ANPRM discussed an additional category of low stress pipelines which they called delivery lines. Delivery lines generally were described as pipelines that transport hazardous liquids between trunk lines or marine facilities and other petrochemical facilities, for example, refineries, manufacturing plants, and storage or transfer terminals.

In general, operators report that deleting the exception would have minimal economic impact on the operation of low stress trunk lines. Minimal impact is expected because many low stress trunk lines already are operated in accordance with Part 195 even though they are excepted from this requirement. On the other hand, operators anticipate that the initial and continuing annual cost of complying with Part 195 for delivery lines, interfacility lines and gathering lines will be high. Some operators reported anticipated costs of compliance, which have been considered in a regulatory impact analysis of the proposed changes.

Most trunk lines are operated at an internal pressure creating a pipe hoop stress in excess of 20 percent of SMYS of the pipe because it is not economical to construct and operate trunk lines at a low stress. To maximize economy, many trunk lines are designed to be operated at the maximum pressure permitted by Part 195, which is equivalent to 72 percent of SMYS. Low stress trunk pipelines represent 18 percent of the pipelines and 53 percent of the mileage reported and have an average length of 6.7 miles. They are operated at low stress for varying reasons.

In the ANPRM, RSPA stated that it believed that there may be a limited number of low stress trunk lines that transport hazardous liquids for long distances. RSPA believed that these pipelines are operated at low stress because typically they are old and potentially in poor condition. Some operators disputed RSPA's belief, stating that a pipeline is operated at low stress for numerous reasons but not because of its age or condition. Among the reasons given were: structural considerations other than internal pressure (for example, rigidity); low volume demands on the pipeline; diminishing volumes transported; and minimal consequences of damage from external sources.

Of the pipelines for which length was reported, 20 pipelines were reported to be 30 miles and longer. Of the 20 lines, 15 were trunk lines which normally would be operated at high stress. RSPA considered that the average accident costs per mile reported for these 20 longer lines are about one-fourth of the average for all types of low stress pipelines. Therefore, the longer low stress trunk lines represent no greater risk than all reported pipelines operated at low stress. Regulation of a low stress pipeline on the basis of its length is not proposed.

Gathering lines represent another category of low stress pipelines. As set forth in § 195.1, gathering lines in non-rural areas, other than low stress lines, currently are subject to Part 195, while gathering lines in rural areas, regardless of their stress level, are not subject to those rules. Of 1526 pipelines identifiable by pipeline category for which length was reported, there were 153 gathering lines (564 miles) with an average length of 3.7 miles. They represent 16 percent of the mileage and 10 percent of the pipelines analyzed.

Some operators and one industry trade association commented that, if regulated, low stress gathering lines in economically marginal operations could be shut down. They further commented that shutdown would result in hazardous liquids being moved by other modes of transportation, which they argue are more expensive and more hazardous. The commenters did not suggest specific separate treatment for economically marginal gathering operations.

Some operators expressed concern that gathering lines in rural areas would become regulated. No change in the definition of rural area is proposed, and rural gathering lines have been excepted from regulation by statute. However, the Pipeline Safety Act of 1992, Public Law No. 102–508, which was enacted on October 24, 1992, allows regulation of rural gathering lines. Therefore, certain rural gathering lines currently excepted from regulation may be regulated in the future. In this NPRM, RSPA proposes to regulate low stress gathering lines only to the extent they are located in populated areas or offshore.

The ANPRM questionnaire requested reports of pipelines within 220 yards of populated areas, defined as areas other than rural areas under § 195.2. Currently, gathering lines in non-rural (populated) areas are subject to Part 195 unless they are operated at low stress. The data reported indicate that some low stress gathering lines are transporting large volumes of hazardous liquids in populated areas. Some operators suggested that no gathering lines should be regulated but offered nothing to address the safety and environmental concerns about gathering lines or a rationale for different treatment. RSPA proposes to regulate those lengths of low stress level gathering lines traversing populated areas. Whether all gathering lines

(regardless of their stress level), including those in populated areas, should be excepted from regulation is beyond the scope of this rulemaking.

Some operators expressed concern that incorporated political subdivisions of state governments such as counties and townships would be considered by regulation to be non-rural areas, and therefore that gathering lines in such areas would become regulated. Under the definition in § 195.2, rural area means outside the limits of any incorporated or unincorporated city, town, or village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, or community development. A county, township, and similar political subdivision is not the same as a city, town, or village. Therefore a gathering line in a rural area of a county, township or similar political subdivision is not intended to be regulated.

Comments confirmed RSPA's belief that low stress interfacility pipelines used to move hazardous liquids to or from petrochemical facilities such as refineries, manufacturing plants, and hazardous liquid terminals, are relatively short. Low stress operation is adequate to move the liquid to or from the complex at the rate required for operation. Design of such pipelines frequently is based on considerations other than internal pressure, for example, additional thickness to provide rigidity or an allowance for expected corrosion. The operators of low stress interfacility lines usually have not operated pipelines subject to part 195, and therefore may not be familiar with its requirements. Certain interfacility pipelines will become regulated under the proposed rulemaking. Interfacility lines represented about 65 percent of the pipelines and 27 percent of the miles reported. Included in these interfacility pipeline statistics are 891 pipelines (716 miles) reported by one operator, Shell, of a total of 996 interfacility pipelines (939 miles) reported.

In response to the ANPRM, commenters asked whether intrafacility lines (in-plant piping) within petrochemical facilities and interfacility lines (piping connecting facilities) crossing a common boundary or a single public thoroughfare between adjacent properties would be subject to regulation if the regulations were changed. Intrafacility lines are excepted from regulation in accordance with § 195.1(b)(6). However, intrafacility piping connecting adjacent facilities separated by navigable waterways or separated by third party property other than single public thoroughfares in populated areas would be subject to the regulations if the 20% SMYS exception is modified.

The data reported in response to the ANPRM indicate that delivery lines were a type of low stress pipeline not anticipated by RSPA prior to the ANPRM. Comments by operators indicate that low stress delivery lines typically are short lines. The data for those reported (105 lines, 126 miles) indicate an average length of about 1¼ mile. They represent a small portion of the lines affected by the proposed rulemaking, but generally they move large volumes of hazardous liquids. Of all pipelines reported, delivery lines represent only about 7 percent of the lines and 4 percent of the miles. The proposed rules would regulate many of these low stress delivery lines based on their transporting a highly volatile liquid or traversing a populated area or navigable waterway. RSPA does not propose a separate treatment for them.

Some operators expressed concern that piping within storage or terminal facilities would become regulated. Piping associated with breakout tanks at storage facilities of regulated hazardous liquid pipelines currently is regulated, regardless of operating stress, if the liquids are reinjected and transported further by a pipeline system that is regulated. Conversely, piping within distribution and marketing terminals exclusively transferring hazardous liquids between modes of transportation excepted from regulation under § 195.1(b)(7).

Some operators explicitly included the cost to pressure test in their estimates of the cost of compliance. The treatment of the cost of hydrostatic testing is covered in the regulatory impact analysis performed by VNTSC.

Some operators and one government representative have suggested the use of pneumatic testing (air under pressure) as a low cost alternative to hydrostatic testing (water under pressure). The American Society of Mechanical Engineers (ASME) Code for Pressure Piping ASME B31.4–1989 Edition for Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols (B31.4) permits the use of hydrostatic or pneumatic testing for pipelines to be operated at a hoop stress of 20 percent or less of SMYS of the pipe. Part 192 (Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards) permits the use of pneumatic tests as an alternative to hydrostatic tests. The use of pneumatic testing would eliminate the need to collect and process the testing water contaminated by residual contents of the pipeline. RSPA has not included a proposal to permit pneumatic testing of hazardous liquid pipelines. Comments are invited on whether and to what extent pneumatic testing should be permitted in lieu of hydrostatic testing.

Some commenters claimed that the cost to bring low stress pipelines into compliance and to operate the pipelines in compliance with Part 195 is not commensurate with the benefits of regulation. The principal costs noted were preparation and maintenance of operations and maintenance manuals, drug testing programs, pressure monitoring equipment, cathodic protection systems, and pressure testing. Some operators of low stress pipelines suggest that, because of the cost, only low stress pipelines traversing populated areas, navigable waters, or environmentally sensitive areas should be considered for regulation. Two government commenters supported removing the blanket exception for low stress pipelines, but argued for a limited exception based on criteria such as age, length, location, and volume transported. Two other government commenters supported regulation of all low stress pipelines.

RSPA carefully considered comments that suggested regulating low stress pipelines. The regulatory impact analysis indicates that the benefits of regulating all low stress pipelines substantially exceed the costs. At this time, RSPA proposes regulating low stress pipelines only on the basis of one or more measures of risk as discussed below.

Several commenters discussed the length of time needed to comply with regulations if the exception is deleted or modified. Both 1 year and 5 years were suggested as the time needed for compliance. Comments are solicited as to whether one year would provide sufficient time to bring newly regulated low stress pipelines into compliance with parts 195 and 199.

A letter from Senator Lautenberg of New Jersey suggested that RSPA require that operators of low stress pipelines apply to RSPA on an individual basis to continue the exception from regulation of individual low stress pipelines. The Senator would require that operators certify initially and annually thereafter the conditions justifying the exception. Since RSPA's proposal would discontinue the exception for most higher risk pipelines, and there is an existing method to obtain waiver from regulation, RSPA plans no further action on this comment.

Proposal

RSPA proposes to revise § 195.1(b)(3) which excepts low stress pipelines from regulation under Part 195 by excepting from regulation only a low stress pipeline that is not used in the transportation of a highly volatile liquid or that does not traverse a populated area or a navigable waterway. RSPA does not propose to regulate low stress pipelines on the basis of any additional criteria. RSPA's proposed rule will reduce the risk to public safety and the environment and is supported by a favorable benefit/cost ratio determined on the basis of data furnished by operators of low stress hazardous liquid pipelines and published data on pipelines. This proposal was developed in response to recommendations from the National Association of Pipeline Safety Representatives (NAPSR) and the Safety Review Task Force of the Department of Transportation (DOT). It also is responsive to the delegation to RSPA following passage of the Oil Pollution Act of 1990 regarding prevention of spills and the containment of oil in pipelines. This delegation concerns the prevention of pollution of navigable waters, shorelines, and the exclusive economic zone. Finally, this proposal is responsive to the amendment to section 203(b) to the Hazardous Liquid Pipeline Safety Act (HLPSA) made by section 206 of the Pipeline Safety Act of 1992. That amendment provides that exception to regulation under the HLPSA shall not be based solely on operation at low internal stress.

RSPA now proposes to regulate the low stress pipelines which are used for the transportation of highly volatile liquids or which traverse populated areas or crossing navigable waterways. RSPA is deferring a decision on whether to propose regulation of low stress lines in environmentally sensitive areas because that subject is being studied to evaluate the extent to which pipeline spills affect environmentally sensitive areas and to develop a definition of environmentally sensitive areas appropriate for pipeline regulation.

This proposal to regulate low stress pipelines that cross navigable waters will assure that pipelines that could be struck and damaged by vessel operations, will not be excepted from regulation. Low stress pipelines also may be located in water which is "navigable" under some definitions, but which is not navigable in fact. Because these pipelines are not at risk of being damaged by vessel operations, RSPA does not propose to regulate such pipelines at this time. They will be considered for regulation when RSPA considers extension of the regulation of low stress pipelines in environmentally sensitive areas.

Regardless of the stress at which they are operated, pipelines are vulnerable to damage from the two principal causes of pipeline failures—outside force damage and corrosion. Admittedly, pipelines which are operated at lower stresses may survive damage from outside force and corrosion for a longer period before failure than will high stress pipelines, but the risk of failure is present nevertheless. The December 1989 Exxon pipeline failure, which spilled oil into the Arthur Kill waterway between New York and New Jersey at a cost of $45 million, is an illustration of a spill from an unregulated low stress pipeline caused by outside force damage. The December 1986 Kinley pipeline failure, which spilled 5000 gallons of jet fuel into surface and ground water in Iowa and has cost $273,000 to date, is an illustration of a spill from an unregulated low stress pipeline caused by corrosion.

Under the proposed rulemaking, RSPA would revise § 195.1(b)(3), which now excepts from regulation all low stress pipelines, to regulate certain new and existing low stress pipelines. Existing pipelines that would be brought under the regulations because of the modification of the exception would be subject to Part 199 and all subparts of Part 195 except Subparts C—Design Requirements, D—Construction, and E—Hydrostatic Testing, except that Subpart E would apply only to low stress pipelines used in the transportation of a highly volatile liquid (HVL). The exception from the design and construction requirements is covered by the proposed addition of § 195.401(c)(5). Although the requirements of Subpart E—Hydrostatic Testing currently would not apply to non-HVL pipelines constructed before dates specified in § 195.302, an NPRM published on May 22, 1991 (Docket No. PS–121; Notice 1; 56 FR 23538) proposes hydrostatic testing of those pipelines at a pressure at least 25 percent in excess of the maximum operating pressure or, alternatively, a commensurate reduction of the operating pressure. RSPA proposes that the testing rules proposed in PS–121 Notice 1 would not apply to non-HVL low stress pipelines that would become subject to Part 195 if § 195.1(b)(3) is modified as proposed in this NPRM.

All sections of parts 195 and 199 would apply to regulated low stress pipelines constructed after the effective date of the issuance of a final rule. The proposed modification of § 195.1(b)(3) would not affect pipelines currently excepted by other criteria in § 195.1(b).

RSPA proposes to correct § 195.1(b)(7) to delete the period at the end and add "; and". This will clarify that part 195 does not apply to pipelines excepted under any of the criteria in § 195.1(b).

Operators of pipelines currently excepted under § 195.1(b)(3) are cautioned that proposed regulations being considered now or in the future may apply to the operation of those pipelines currently excepted under § 195.1(b)(3), and are advised to follow all notices pertaining to hazardous liquid pipeline regulation appearing in the **Federal Register**.

Request for Comments

Comments may address any aspect of this proposal. However, RSPA requests specific comments on the following: Whether there should be separate treatment in this rulemaking for economically marginal gathering line operations in non-rural areas and what form such treatment should take; whether pneumatic testing of low stress pipelines should be permitted as an alternative to hydrostatic testing under subpart E; and whether one year would provide sufficient time to comply with parts 195 and 199 to the extent they would be made applicable.

Impact Assessment

These proposals would extend the requirements of parts 195 and 199 to certain steel pipelines currently excepted from regulation solely on the basis of a low operating stress level under § 195.1(b)(3). Pipelines constructed prior to or under construction on the effective date of the proposed rule would be subject to all of Part 195 except subparts C, D, and E which apply respectively to design, construction, and hydrostatic testing. Operators have raised issues regarding the cost of implementation, particularly regarding the cost of implementation for gathering lines in areas other than rural areas. Operators also have suggested that any change to the existing exception be limited to low stress pipelines in higher risk areas. The proposed modification of the regulations is consistent with these operator comments.

From the responses to the ANPRM, the accident cost per mile per year on low stress pipelines not operated in accordance with those regulations was estimated to be $3692. The accident cost per mile per year on low stress pipelines already operated in accordance with the pipeline safety regulations was estimated to be $105 per mile per year. Further, the five-year average cost of

accidents on high stress (regulated) lines taken from incident reports in OPS files is similar to the costs for those low stress lines operated in compliance with the regulations. Therefore, RSPA presumes that the cost of accidents on low stress pipelines will be reduced to a level of $105 per mile per year.

In developing the analysis, the cost of the Exxon Arthur Kill accident was distributed over ten years. RSPA considers this distribution period equitable because of the age of pipelines systems in general, and because the cost consequences of accidents are increasing rapidly as a consequence of environmental considerations. Overall, the regulatory impact analysis indicates a favorable benefit/cost ratio.

Regulatory Analyses and Notices

Executive Order 12291 and DOT Policies and Procedures

This proposed rule is considered to be non-major under Executive Order 12291, and is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A Draft Regulatory Evaluation has been prepared and is available in the docket.

Paperwork Reduction Act

The reporting requirements in subpart B and recordkeeping requirements under §§ 195.54, 195.55, 195.56, 195.57, 195.234, 195.266, 195.310, 195.402, and 195.404 are being submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Transportation. This submission would modify the current approval of pipeline recordkeeping and accident reporting under OMB Nos. 2137–0047, 2137–0578, and 2137–0583. The proposed regulation of certain pipelines operated at 20 percent or less of SMYS would represent an increase of about 7100 additional pipeline miles subject to the reporting and recordkeeping requirements in Part 195, or 5 percent more than the miles currently subject to those requirements. RSPA estimates that burden hours for recordkeeping and accident reporting will increase a total of 2494 hours above the current burden of 55639 hours to 58133 hours.

Regulatory Flexibility Act

Based on the facts available about the anticipated impact of this proposed rulemaking action, I certify, pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that the action will not have a significant economic impact on a substantial number of small entities, because few, if any, small entities operate pipelines subject to part 195. Each operator responding to the ANPRM reported that it was not a small business.

Executive Order 12612

RSPA has analyzed this action in accordance with the principles and criteria contained in E.O. 12612 (52 FR 41685) and has determined that it does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

Part 195—Transportation of Hazardous Liquids by Pipeline

1. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2001 et seq.; 49 CFR 1.53.

2. Section 195.1 would be amended by revising paragraphs (b)(3) and (b)(7), and adding paragraph (d) to read as follows:

§ 195.1 Applicability.

* * * * *

(b) * * *

(3) Transportation of a hazardous liquid through a pipeline that is operated at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe, and that:

(i) Is not used in the transportation of highly volatile liquids;

(ii) Does not traverse a populated area; or

(iii) Does not traverse a navigable waterway.

* * * * *

(7) Transportation of a hazardous liquid or carbon dioxide by vessel, aircraft, tank truck, tank car, or other vehicle, or terminal facilities used exclusively to transfer hazardous liquids or carbon dioxide between such modes of transportation; and

* * * * *

(d) The operator of a pipeline that was excepted from regulations prior to [date of pubulication of the final rule will be inserted] on the basis of operation at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe must comply with this part by [one year after the date of publication of the final rule will be inserted].

3. Section 195.2 would be amended by adding in appropriate alphabetical order the followning definitions:

§ 195.2 Definitions.

* * * * *

Navigable waterway means a waterway which is navigable in fact and is currently used for commercial navigation.

* * * * *

Populated area means any onshore area other than a rural area.

* * * * *

4. Section 195.302 would be amended by redesignating paragraph (c) as paragraph (d) and adding new paragraph (c) to read as follows:

§ 195.302 General requirements.

* * * * *

(c) After [one year after date of publication of the final rule will be inserted], no person may transport a highly volatile liquid in a pipeline that was excepted from regulation under this part prior to [date of publication of the final rule will be inserted] on the basis of operation at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe unless the pipeline has been hydrostatically tested in accordance with this subpart or its maximum operating pressure has been established under § 195.406(a) (6) or (7).

* * * * *

5. Section 195.401 would be amended by adding paragraph (c)(5) to read as follows:

§ 195.401 General requirements.

(c) * * *

(5) A pipeline not regulated on the basis of operation at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe prior to [date of publication of the final rule will be inserted] on which construction was begun after [date of publication of the final rule will be inserted].

6. Section 195.406 would be amended by adding paragraphs (a)(6) and (a)(7) to read as follows:

§ 195.406 Maximum operating pressure.

(a) * * *

(6) In the case of a pipeline used for the transportation of hazardous liquids that was not regulated prior to [date of publication of the final rule will be inserted] because it was operated at a stress level of 20 percent or less of the specified minumum yield strength of the line pipe and that was not tested under subpart E of this part, 80 percent of the test pressure or 100 percent of the highest operating pressure to which the

pipeline was subjected for four or more continuous hours that can be demonstrated by recording charts or logs made at the time the test or operations were conducted.

(7) In the case of a pipeline used for the transportation of highly volatile liquids that was not regulated prior to [date of publication of the final rule will be inserted] because it was operated at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe and that was not tested under subpart E of this part, 80 percent of the test pressure or highest operating pressure to which the pipeline was subjected for four or more continuous hours that can be demonstrated by recording charts or logs made at the time the test or operations were conducted.

* * * * *

Issued in Washington, DC on February 26, 1993.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 93–4850 Filed 3–2–93; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 58, No. 40
Wednesday, March 3, 1993

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of the meeting of the Committee on Rulemaking of the Administrative Conference of the United States.

Committee on Rulemaking

Date: Tuesday, March 9, 1993

Time: 9:00 a.m.

Location: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC. 20037 (Library, 5th Floor).

Agenda: The Committee will meet to further discuss a report by Jerry Mashaw on improving the environment of agency rulemaking.

Contact: Kevin L. Jessar, 202–254–7020.

Attendance at the committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request. The contact person's mailing address is: Administrative Conference of the United States, 2120 L Street NW., suite 500, Washington, DC 20037. Telephone: 202–254–7020.

Dated: February 26, 1993.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 93–4914 Filed 3–2–93; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Grouse Insect Salvage Timber Sale, Sequoia National Forest, CA; Exemption from Appeal

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Grouse Insect Salvage Timber Sale Decision, Hume Lake Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service is exempting from appeal the decision resulting from the Grouse Insect Salvage Timber Sale Environmental Analysis. This environmental analysis is being prepared in response to the severe timber mortality in the Dry Compartment on the Hume Lake Ranger District, Sequoia National Forest. The mortality was caused by drought and related insect infestation. The Grouse Analysis Area is south of Kings Canyon National Park in the Dry Creek and Upper Mill Creek Watersheds.

There are currently much higher than normal levels of tree mortality occurring throughout the Sequoia National Forest as a result of six consecutive years of below normal precipitation. The Hume Lake District is proposing tractor harvest of 1.0 million board feet (MMBF) on 1,000 acres in the Grouse Insect Salvage Analysis. No new road construction will be done and only minor road reconstruction associated with winter storm damage is planned in the analysis area. All areas are within the General Forest Zone, as delineated by the Sequoia National Forest Land and Resource Management Plan.

The drought has caused a high degree of stress within the trees, which reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by bark beetles. Trees killed by insect attack deteriorate very rapidly. In addition, excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult. Prompt removal of the dead and dying timber minimizes value and volume loss.

The decision for the proposed project is scheduled to be issued the end of February 1993. Implementation of the project will occur in April, 1993, when the timber sale will be sold. Harvest is expected to begin in May, 1993.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision relating to the harvest and restoration of lands affected by drought-induced timber mortality covered by the Grouse Insect Salvage Timber Sale Environmental Analysis on the Hume Lake Ranger District, Sequoia National Forest. The environmental document being prepared will address the effects of the proposed actions on the environment, will document public involvement and will address the issues raised by the public.

EFFECTIVE DATE: This decision is effective March 3, 1993.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or to Sandra Key, Forest Supervisor, Sequoia National Forest, 900 W. Grand Ave., Porterville, CA 93257, (209) 784–1500.

SUPPLEMENTARY INFORMATION: The environmental analysis for this proposal will be documented in the Grouse Insect Salvage environmental document. Scoping letters were mailed in February to representatives of various environmental groups and the timber industry, to provide information about the project and to generate public issues and concerns. The project files and related maps are available for public review at the Hume Lake Ranger District, 35860 East Kings Canyon Road, Dunlap, California 93621.

The catastrophic damage presently occurring in the Dry Creek and Upper Mill Creek Watersheds involves approximately 8,200 acres. Within this area, approximately 1,000 acres with an associated 1.0 MMBF, is presently being analyzed for salvage in one sale. The value to the Forest Service of the salvage volume is estimated at $250,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Fresno and Tulare Counties will share 25% of the selling value for any of the timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures will be implemented for watershed protection, erosion prevention, and fuels reduction.

The proposals are not expected to adversely affect snag dependent wildlife species. Initial review indicates that post-harvest snag numbers will be in compliance with the Forest Plan Standard and Guidelines. No Wild and Scenic rivers, wetlands, wilderness areas, roadless areas, or threatened or endangered species are within the proposed project areas.

Dated: February 23, 1993.

Dale N. Bosworth,

Deputy Regional Forester.

[FR Doc. 93-4837 Filed 3-2-93; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

(A-570-820)

Notice of Postponement of Final Determination of Sales at Less Than Fair Value: Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 2, 1993.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4929.

POSTPONEMENT: On February 3, 1993 (58 FR 8930, February 18, 1993), the Department of Commerce (the Department) issued an affirmative preliminary determination in the antidumping duty investigation of certain compact ductile iron waterworks fittings and accessories thereof from the People's Republic of China (PRC).

On February 12, 1993, China National Metal Products Import and Export Corporation (CMP), which accounted for a significant portion of exports from the PRC to the United States, requested that the Department postpone the final determination 60 days, until June 18, 1993. Respondent made this request in order to ensure adequate time to prepare for verification and to allow the Department to complete its margin calculation after the verification.

In order to allow the Department sufficient time to analyze the data it has gathered in the investigation, we are postponing the final determination the full extent authorized under section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). The final determination will, therefore, be issued not later than July 6, 1993, which is 135 days after the date of publication of the preliminary determination.

On February 18, 1993, respondent requested a public hearing in this investigation. Because of the postponement of the final determination, the tentative hearing date of April 5, 1993 announced in the preliminary determination has been changed. In accordance with 19 CFR 353.38, case briefs, or other written comments, must now be submitted in at least ten copies to the Assistant Secretary for Import Administration no later than June 1, 1993, and rebuttal briefs no later than June 8, 1993. In addition, a public version and five copies should be submitted by the appropriate date if the submission contains business proprietary information. Tentatively, the hearing will be held at 9:30 a.m. on June 10, 1993, at the U.S. Department of Commerce, Room 1411, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

This notice is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20(b)(2).

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-4785 Filed 3-2-93; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[A-122-820, A-122-821, A-122-822, A-122-823]

Postponement of Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Canada

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: March 3, 1993.

FOR FURTHER INFORMATION CONTACT: Jean Kemp or Art Stern, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3793.

POSTPONEMENT OF FINAL DETERMINATIONS: Dofasco, Inc. (Dofasco), and Stelco, Inc. (Stelco), respondents in these proceedings, represent a significant proportion of exports of certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion-resistant carbon steel flat products (corrosion-resistant steel), and certain cut-to-length carbon steel plate (steel plate) from Canada to the United States. On February 2, 1993, Dofasco and Stelco requested that the Department postpone the final determinations until not later than 135 days after the date of publication of the preliminary determinations, in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act).

Pursuant to 19 CFR 353.20(b), if exporters who account for a significant proportion of exports of the merchandise under investigation request an extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Dofasco and Stelco together account for a significant proportion of exports under investigation in these proceedings. Accordingly, we are postponing our final determinations as to whether sales of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate from Canada have been made at less than fair value until not later than June 21, 1993.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: February 22, 1993.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-4790 Filed 3-2-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-701]

Potassium Chloride From Canada; Determination Not To Terminate Suspended Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of determination not to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the suspended antidumping investigation on potassium chloride from Canada.

EFFECTIVE DATE: March 3, 1993.

FOR FURTHER INFORMATION CONTACT: Wendy Frankel, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On December 23, 1992, the Department of Commerce (the Department) published in the Federal Register (57 FR 61046) its notice of intent to terminate the suspended investigation on potassium chloride (potash) from Canada. Pursuant to 19 CFR 353.25(d)(4)(i), the Department may terminate a suspended investigation if the Secretary of Commerce concludes that the suspended investigation is no longer of interest to interested parties because the Department has not received a request by an interested party to conduct an administrative review of the suspended investigation for five consecutive anniversary months, and there has been no objection to the termination by an interested party.

On January 29, 1993, the following United States producers of potassium chloride, which meet the requirements of 19 CFR 353.2(k)(3) as interested parties, objected to the Department's intent to terminate this suspended investigation: Cedar Chemical Corporation (which operates New Mexico Potash Corporation and Eddy Potash Inc.) and Mississippi Chemical Corporation. On January 28, 1993, Horizon Potash Corporation, another U.S. producer of potash, also objected to termination of the suspended investigation. The following parties also objected to termination of the suspended investigation: The City of Carlsbad, New Mexico, the United Steelworkers of America Local Union Number 177, the International Association of Machinists and Aerospace Workers Local Lodge Number 1265, the International Brotherhood of Electrical Workers Local Union Number 611, the Mine Supply Company, the Carlsbad Department of Development, and the Carlsbad Chamber of Commerce. As a result of the objections filed by the parties meeting the requirements of 19 CFR 353.2(k)(3), we no longer intend to terminate the suspended investigation.

This notice is in accordance with section 353.25(d)(4) of the Commerce Department's regulations (19 CFR 353.25(d)(4)).

Dated: February 19, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–4789 Filed 3–2–93; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: New Orleans MBDC, Project I.D. No. 06–10–93004–01

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $230,400 in Federal funds. An audit fee of $5,760 has been added to the Federal amount. The total funding breakdown is as follows: $236,160 Federal and $41,675 non-Federal for a total of $277,835. The period of performance will be from July 1, 1993 to June 30, 1994. The MBDC will operate in the New Orleans, Louisiana MSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement.

Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance, with OMB Circular A–129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC

work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law. All applicants are subject to a name check review.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Public Law 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD–511, the "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered by Transactions and Lobbying".

CLOSING DATE: The closing date for applications is April 6, 1993. Applications must be postmarked on or before April 6, 1993.

Note: Please mail completed application to the following address: Dallas Regional Office, 1100 Commerce St., Room 7B23, Dallas, Texas 75242.

FOR ADDITIONAL INFORMATION REGARDING THIS SOLICITATION: Dallas Regional Office, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara, (214) 767–8001.

Requests for application kit must be in writing.

A pre-bid conference will be held on March 19, 1993 in the Earl Cabell Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: February 25, 1993.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 93–4828 Filed 3–2–93; 8:45 am]

BILLING CODE 3510–21–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 16–17 March 1993.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II sec. 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: February 25, 1993.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–4786 Filed 3–2–93; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 2, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708–5174. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service publishes this notice containing proposed information collection requests prior to submission of these requests to OMB Each proposed

information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: February 25, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: Annual Supported Employment Caseload Report
Frequency: Annually
Affected Public: State or local government
Reporting Burden:
Responses: 84
Burden Hours: 84
Recordkeeping Burden:
Recordkeepers: 84
Burden Hours: 84
Abstract: This form will collect data on severely disabled clients served by State supported employment service programs. The Department will use the information to report to Congress.

Office of Educational Research and Improvement

Type of Review: New
Title: Baccalaureate and Beyond Longitudinal Study: First Followup
Frequency: On occasion
Affected Public: Individuals or households
Reporting Burden:
Responses: 1,904
Burden Hours: 1,558
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This collection will report data about students who completed a baccalaureate degree in academic year 1992–93. The Department will use this data to address major policy issues related to postsecondary education.

Type of Review: Reinstatement
Title: National Education Longitudinal Study: 1988–1994
Frequency: Annually
Affected Public: Individuals or households
Reporting Burden:
Responses: 800
Burden Hours: 550
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This longitudinal study will collect data from individual respondents on the educational, vocational and personal development of a subsample of eighth grade students. The Department will use the information to make possible analyses of the patterns of transition from the eight grade level through high school and postsecondary education and into adulthood and the world of work.

Office of Policy and Planning

Type of Review: New
Title: School Dropout Demonstration Assistance Program Evaluation, Student Followup Survey
Frequency: Annually
Affected Public: Individuals or households institutions
Reporting Burden:
Responses: 10,176
Burden Hours: 6,818
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This project will examine the effects of dropout prevention programs on students' educational outcomes. The Department will use the information to assess the effectiveness of various models of educational intervention in promoting improved educational experiences and outcomes.

Office of Bilingual Education and Minority Language Affairs

Type of Review: New
Title: Verification of Title VII Funded Grant Applications
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 1,223
Burden Hours: 184
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: These verification instruments will collect information on the services provided to students/participants served by FY 92 Title VII funded projects. The Department will use the information to support policy-related and program management decisions.

[FR Doc. 93–4851 Filed 3–2–93; 8:45 am]
BILLING CODE 4000–01–M

National Education Commission on Time and Learning; Hearing

AGENCY: National Education Commission on Time and Learning, Education.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public Hearing of the National Education Commission on Time and Learning. This notice also describes the functions of the Commission. Notice of this Hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: March 24, 1993 from 1 p.m. to 4 p.m.; March 25, 1993 from 1:30 p.m. to 3:30 p.m.; and March 26, 1993 from 9 a.m. to 4 p.m.

ADDRESSES: Santa Monica Malibu Unified School District, Board Room, 1651 16th Street, Santa Monica, California. Telephone: Barbara Camptelli, (310) 576–1400.

FOR FURTHER INFORMATION CONTACT: Julia Anna Anderson, Deputy Executive Director, 1255 22nd Street, NW., suite 502, Washington, DC 20202–7591. Telephone: (202) 653–5063.

SUPPLEMENTARY INFORMATION: The National Education Commission on Time and Learning is established under section 102 of the Education Council Act of 1991 (20 U.S.C. 1221–1). The Commission is established to examine the quality and adequacy of the study and learning time of elementary and secondary students in the United States, including issues regarding the length of the school day and year, how time is being used for academic subjects, the use of incentives, how time is used outside of school, the extent and role of homework, year-round professional opportunities for teachers, the use of school facilities for extended learning programs, if appropriate a model for adopting a longer day or year, suggested changes for state laws and regulations, and an analysis and estimate of the additional costs.

The Hearing of the Commission is open to the public. The proposed agenda for March 24 includes: A site visit to the Beacon Day School in Oakland, California and a panel discussion with students, parents, teachers and administrators. The proposed agenda for March 25 and 26 includes: Discussions with practitioners, researchers, and the general public on Cost Issues and Time Use and the other mandates as outlined in Public Law 102–62. Records are kept of all Commission proceedings, and are available for public inspection at the Office of the Commission at 1255 22nd Street, NW., suite 502, Washington, DC 20202–7591 from the hours of 9 a.m. to 5:30 p.m.

Dated: February 25, 1993.

John Hodge Jones,

Chairman, National Education Commission on Time and Learning.

[FR Doc. 93–4885 Filed 3–2–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93–381–000, et al.]

Pacific Gas & Electric Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 24, 1993.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER93–381–000]

Take notice that on February 18, 1993, Pacific Gas and Electric Company tendered for filing a Settlement Agreement between PG&E and the Western Area Power Administration (Western).

The Settlement Agreement revolves pending litigation between the parties as well as a number of billing and payment-related issues arising from Contract 14–06–200–2948A (Contract 2948A) and effects certain modifications to that contract. The issues resolved concern specific outstanding disputes relating to a) Western's purchase of capacity from PG&E for the period January 1, 1980 through December 31, 1992, b), PG&E excess capacity purchases from Western for the period January 1, 1988 through December 31, 1992, as well as other disputed transactions between the parties that took place between January 1, 1980 and the date the Settlement Agreement was last signed, December 31, 1992. Western shall pay to PG&E one hundred and eighteen million, three hundred fifty thousand dollars ($18,350,000). PG&E shall separately pay to Western forty-four million, six hundred thousand dollars ($44,600,000) and, once the necessary regulatory approvals have been obtained, dismiss certain litigation now pending. Interest shall accrue on the principal sums commencing August 24, 1992. As part of the Settlement Agreement, the Capacity Account and the Capacity Exchange Account (Article 20(a) and 20(e) of Contract 2948A respectively, are deemed to have a zero balance as of December 31, 1992, and are abolished as of that time.

Copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment date. March 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Iowa Electric Light and Power Company

[Docket No. ER93–262–000]

Take notice that Iowa Electric Light and Power Company (Iowa Electric), on February 19, 1993, tendered for filing a second Amendment to its December 7, 1992 filing in the above docket. The Amendment provides additional information relating to and justification for a change in the rates charged in Service Schedule E (Limited Term Power) to the Interconnection Agreement between Iowa Electric and Central Illinois Public Service Company.

Copies of this filing have been sent to Central Illinois Public Service Company, the Iowa State Utilities Board, and the Illinois Commerce Commission.

Comment date: March 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER93–38–000]

Take notice that on February 22, 1993, Pacific Gas and Electric Company (PG&E) tendered an amendment to its filing in FERC Docket No. ER93–38–000. That docket consists of an agreement entitled "Special Facilities Agreement for the Atlantic Substation Upgrade" between the Sierra Pacific Power Company (Sierra) and PG&E. In response to concerns raised by Commission staff, PG&E has included further information regarding the Special Facilities Agreement, and presents for filing and acceptance a related amendment to the PG&E-Sierra Interconnection Agreement. This amendment sets a cap on transmission revenues received from Sierra for existing transmission services, including the service supplied in part as a result of the Special Facilities Agreement.

Copies of this filing have been served upon Sierra and the California Public Utilities Commission.

Comment date: March 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Delmarva Power & Light Company

[Docket Nos. ER92–236–000, EL92–13–000, ER93–96–000 and EL93–11–000]

Take notice that Delmarva Power & Light Company of Wilmington, Delaware (Delmarva) on February 19, 1993, filed a request that the Commission (i) terminate as between Delmarva and the City of Berlin, Maryland (Berlin) Docket No. EL92–13–000; (ii) terminate as between Delmarva and Berlin Docket No. ER92–236–000 to the extent that docket involves issues that do not relate to rate design; (iii) approve the rate filed in Docket No. ER92–236–000 on March 19, 1992 for application to the City of Berlin for the period February 19, 1992 through and including June 2, 1993; and (iv) terminate the refund contingency currently associated with that rate. Delmarva describes its request as having no effect on the rate design litigation between Delmarva and Berlin in Docket No. ER92–236–000, and as having no effect on Docket Nos. ER93–96–000 and EL93–11–000.

Delmarva states that Berlin does not oppose its request. Delmarva also states that the aforesaid request has been served on the City of Berlin and on each of the persons listed on the official service list in Docket Nos. ER92–236–000, EL92–13–000, ER93–96–000 and EL93–11–000. Delmarva serves Berlin under its Rate Schedule No. 63.

Comment date: March 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Public Service Corporation

[Docket No. ER93–382–000]

Take notice that on February 19, 1993, Wisconsin Public Service Corporation (WPSC) tendered for filing with the Federal Energy Regulatory Commission an Interchange Agreement with Otter Tail Power Company (OTP). WPSC and OTP request an effective date of 60 days after the date of filing.

WPSC states that a copy of the filing has been provided to OTP and also to the State Commissions where WPSC and OTP serve at retail.

Comment date: March 10, 1993, in accordance with Standard Paragraph E end of this notice.

6. Arizona Public Service Company

[Docket No. ER93–384–000]

Take notice that on February 19, 1993, Arizona Public Service Company (APS) tendered for filing revised Exhibit II to the Wholesale Power Agreement between APS and Aguila Irrigation District (Aguila) (APS–FERC Rate Schedule No. 141) and revised Exhibit II to the Wholesale Power Agreement between APS and McMullen Valley Water Conservation and Drainage District (McMullen) (APS–FERC Rate Schedule No. 142) (collectively Exhibits). The Exhibits list estimated loads which are used for planning purposes only.

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

A copy of this filing had been served on Aguila, McMullen and the Arizona Corporation Commission.

Comment date: March 10, 1993, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4810 Filed 3–2–93; 8:45 am]

BILLING CODE 6717–01–M

Application Filed With the Commission

February 25, 1993.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Amendment of License for Non-project Use of Project Lands

b. *Project No:* 2354–024

c. *Date Filed:* February 19, 1993

d. *Applicant:* Georgia Power Company

e. *Name of Project:* North Georgia Project

f. *Location:* Tallulah and Tugalo Rivers in Raburn, Habersham and Stephens Counties, Georgia and Oconee County, South Carolina

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Ms. JoLee Gardner, Georgia Power Company, P.O. Box 4545, 270/7, Atlanta, GA 30302, (404) 526–3576

i. *FERC Contact:* Heather Campbell, (202) 219–3097

j. *Comment Date:* March 23, 1993.

k. *Description of Project:* Georgia Power Company proposes to lease land and grant a conservation easement for certain project lands to the Georgia Department of Natural Resources for the purpose of establishing a public park, conservation and recreation area. The property is located in an area of Raburn and Habersham Counties known as the Tallulah Gorge. The licensee and the Georgia Department of Natural Resources also propose entering into an operating agreement relating to Terrora Park Campground and Visitors Center and Tallulah Point.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

B. Comments, Protests, or Motions, to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed providing an original and eight copies to: Secretary, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426. A representative of Georgia Power.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 93–4813 Filed 3–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2785–000]

Wolverine Hydroelectric Corporation; Requesting Comments

February 25, 1993.

As part of staff's review of the license applications for Projects Nos. 10808, 10809, and 10810 and the rehearing of the order issuing license for the Sanford Project No. 2785,[1] staff requested Wolverine Hydroelectric Corporation (Wolverine) to conduct an instream flow study downstream of the Sanford Project. On February 1, 1993, Wolverine filed the results of the study. The study results will be used in an environmental assessment, which will include the Sanford Project and Wolverine's three upstream projects, Edenville Project No. 10808, Secord Project No. 10809, and Smallwood Project No. 10810.

Prior to preparing the environmental assessment, persons and entities are invited to submit comments on the instream flow study as it relates to the Sanford Project. The deadline to file comments pursuant to this notice is 60 days from the date of issuance of this notice.

In addition, the Commission's staff has determined that the Edenville, Smallwood, and Secord Projects, located upstream of the Sanford Project No. 2785, are ready for environmental analysis. By separate notices, the Commission has requested entities to provide recommendations for terms and conditions to be included in the licenses for the Edenville, Smallwood, and Secord Projects.

The staff will consider the comments filed pursuant to this notice and the recommendations filed pursuant to the notices issued for Projects Nos. 10808 through 10810 in the cumulative environmental analysis to be used as part of the record in acting on the rehearing request for the Sanford Project and on the license applications for the Edenville, Secord, and Smallwood Projects.

All filings must: (1) bear in all capital letters the title "COMMENTS," (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address and telephone number of the person

[1] 41 FERC ¶ 61,192

submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Lois D. Cashell,

Secretary.

[FR Doc. 93-4864 Filed 3-2-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EG93-21-000, et al.]

Jersey Generating Co., L.P., et al.; Applications for Determination of Exempt Wholesale Generator Status

February 24, 1993.

Take notice that the following filings have been made with the Commission:

1. Jersey Generating Co., L.P.

[Docket No. EG93-21-000]

On February 18, 1993, Jersey Generating Company, L.P. (JGC), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 as amended.

JGC states that it is developing and intends to own and operate a natural gas-fired electric generating facility with a capacity of up to 170 MW. JGC states that all of the facility's electricity will be sold at wholesale to electric utility companies.

Comment date: March 11, 1993, in accordance with Standard Paragraph W at the end of this notice.

2. SEI Birchwood, Inc.

[Docket No. EG93-22-000]

On February 18, 1993, SEI Birchwood, Inc. (the Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 as amended.

The Applicant states that it is a Delaware limited partnership formed to develop, construct, finance, own and operate a 200 MW coal-fired generation station to be located in King County, Virginia.

Comment date: March 11, 1993, in accordance with Standard Paragraph W at the end of this notice.

3. SEI Hawaiian Cogenerators, Inc.

[Docket No. EG93-25-000]

On February 18, 1993, SEI Hawaiian Cogenerators, Inc. (the Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 as amended.

The Applicant states that it is a Delaware Corporation, organized for the purpose of acquiring an interest in Kalaeloa Partners, L.P., a Delaware limited partnership that owns and operates a 209 MW oil-fired combined cycle cogeneration facility located at Barkers Point Oahu, Hawaii.

Comment date: March 11, 1993, in accordance with Standard Paragraph W at the end of this notice.

4. Birchwood Power Partners, L.P.

[Docket No. EG93-24-000]

On February 18, 1993, Birchwood Power Partners, L.P. (the Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 as amended.

The Applicant states that it is a Delaware limited partnership formed to develop, construct, finance, own and operate a 200 MW coal-fired electric generation station to be located in King George County, Virginia.

Comment date: March 11, 1993, in accordance with Standard Paragraph W at the end of this notice.

5. SEI Birchwood, Inc.

[Docket No. EG93-23-000]

On February 18, 1993, SEI Birchwood, Inc. (the Applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 as amended.

The Applicant states that it is a Delaware limited partnership formed to develop, construct, finance, own and operate a 200 MW coal-fired electric generation station to be located in King George County, Virginia.

Comment date: March 11, 1993, in accordance with Standard Paragraph W at the end of this notice.

Standard Paragraphs

W. Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. Any person wishing to become a party must file a motion to intervene. Copies of this filng are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-4863 Filed 3-2-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-84-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

February 25, 1993.

Take notice that K N Energy, Inc. (K N) on February 23, 1993, tendered for filing the following tariff sheets in its First Revised Volume No. 1-A.

Third Revised Sheet No. 6
Third Revised Sheet No. 42

K N states that the purpose of the filing is to provide for the availability of no fee exchange service. K N requests an effective date of March 25, 1993.

K N states that copies of its filing were served on all of its jurisdictional customers and appropriate state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or a Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before March 4, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-4819 Filed 3-2-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA92-1-59-002, TA92-1-59-003, TA92-1-59-005]

Northern Natural Gas Co.; Extension of Time

February 25, 1993.

On January 25, 1993, Northern Natural Gas Company (Northern Natural) filed a motion for an extension of time to make a compliance filing required by Ordering Paragraph (C) of the Commission's Order Accepting and Rejecting Certain Tariff Sheets, Rejecting Another as Moot, and Requiring PGA Revisions issued December 2, 1992, in the above-docketed proceeding. In its motion, Northern states that additional time is needed because of the press of other business involving personnel who will be preparing the compliance filing.

Upon consideration, notice is hereby given that an extension of time for complying with Ordering Paragraph (C) of the Commission's December 2, 1992, order is granted to an including April 1, 1993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-4866 Filed 3-2-93; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Project Nos. 11104-000, 11106-000, 11107-000, and 11108-000]

City of Oswego, New York; Effective Date of Withdrawal of Applications for Preliminary Permit

February 25, 1993.

On March 14, 1991, the City of Oswego filed applications for preliminary permits for the Spier Falls Incremental Capacity Hydroelectric Project No. 11104-000 and the Sherman Island Incremental Capacity Hydroelectric Project No. 11106-000, both to be located on the Hudson River in Warren and Saratoga Counties, New York; and for the Norfolk Incremental Capacity Hydroelectric Project No. 11107-000 and the Sugar Island Incremental Capacity Hydroelectric Project No. 11108-000, both to be located on the Raquette River in St. Lawrence County, New York. On January 15, 1993, Oswego filed notices of withdrawal of these applications.

No one filed a motion in opposition to the notice of withdrawal, and the Commission took no action to disallow the withdrawal. Accordingly, pursuant to Rule 216 of the Commission's Rules of Practice and Procedure,[1] the withdrawals became effective on February 1, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 93-4865 Filed 3-2-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-83-000]

Williston Basin Interstate Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 25, 1993.

Take notice that on February 23, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), suite 300, 200 North Third Street, Bismarck, North Dakota 58501, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1-B:

Second Revised Sheet No. 75
Original Sheet No. 75A

Williston Basin states that the purpose of the filing is to provide for the availability of no-fee exchange service. Williston Basin requests an effective date of March 25, 1993.

Williston Basin states that copies of its filing were served on all its jurisdictional customers and appropriate state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 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 March 4, 1993. 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 to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-4811 Filed 3-2-93; 8:45 am]

BILLING CODE 6717-01-M

[1] 18 CFR 385.216 (1992).

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4600]

Environmental Financial Advisory Board (EFAB)

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) has been rechartered as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA). The purpose of EFAB is to provide authoritative analysis and advice to the EPA Administrator regarding environmental finance issues to assist EPA in carrying out its environmental mandates. EFAB focuses upon environmental finance issues at the federal, state, and local levels, particularly with regard to their impact upon local governments and small communities.

Dated: February 23, 1993.

John J. Sandy,

Director, Resource Management Division.

[FR Doc. 93-4891 Filed 3-2-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4600-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 2, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Comprehensive Assessment Information Rule (CAIR). (EPA ICR No. 1325.04.; OMB No. 2070-0019). This is a request for extension of the expiration date of a currently approved collection.

Abstract: Under section 8(a) of the Toxic Substances Control Act (TSCA), EPA has the authority to require chemical manufacturers, importers and

processors to maintain records and submit reports to the Agency. The CAIR establishes uniform reporting and recordkeeping requirements for the chemical industry, as well as a list of generic questions that the EPA and other Federal agencies can use to collect chemical-specific information. The information collected under CAIR will be used to support the assessment and regulation of chemical substances and to comply with the TSCA.

Burden Statement: The public burden for this collection of information is estimated to average 225 hours per response annually. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Chemical manufacturers, importers, and processors.

Estimated Number of Respondents: 597.

Estimated Number of Responses Per Respondent: Varies.

Estimated Total Annual Burden on Respondents: 134,325 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC, 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC, 20503.

Dated: February 26, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93-4892 Filed 3-2-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180886; FRL 4572-9]

Receipt of Application for Emergency Exemption to use Acephate; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the South Carolina Department of Fertilizer and Pesticide Control (hereafter referred to as the "Applicant") to use the pesticide acephate (CAS 30560-19-1) to treat up to 4,500 acres of freshmarket tomatoes to control stinkbugs. The Applicant proposes a use for which an emergency exemption has been requested and granted for the past 3 years, and a complete application for registration of this use and a petition for tolerance for residues of acephate in or on tomatoes has not been submitted; therefore, 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 March 18, 1993.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180886," should be submitted by mail 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. 1132, 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. 1132, 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: Andrea Beard, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-7890).

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 Orthene 75S Soluble Powder (acephate) on tomatoes to control stinkbugs. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that stinkbugs are an important tomato pest in South Carolina and must be controlled to prevent very serious economic loss. The Applicant claims that this pest could potentially destroy approximately 25 percent of the fruit under heavy population pressure. Registered alternatives for this pest on tomatoes are highly toxic to aquatic organisms, and can significantly reduce beneficial parasite/predator insect populations. The Applicant claims that these beneficial insects are relied upon for control of less serious tomato pests such as vegetable leafminers, with a minimum of pesticide applications needed. In South Carolina, tomatoes are also grown in highly sensitive coastal areas, and legal applications of registered alternative pesticides for stinkbug control in tomatoes have led to fish kills in the past due to rains and subsequent run-off into adjacent creeks, streams, and estuarine areas.

The Applicant proposes to apply Orthene 75S Soluble Powder at a maximum rate of 1.0 pound active ingredient per acre with a maximum of 7 applications on up to 4,500 acres of tomatoes. This amounts to a maximum of 31,500 pounds of active ingredient. This is the eighth year that the Applicant has applied for the use of acephate on tomatoes. In 1983, the request was denied. In the following 6 years for which this use was requested (1987-1992) permission for this use was granted under section 18. Until July of 1989, there was a tolerance petition pending at the Agency for this use, and progress was being made toward its registration. In 1989, the active ingredient and product was transferred to a different registrant, and at that time, the pending tolerance petition was voluntarily withdrawn. Therefore, this use did not meet requirements for publication and solicitation of public comment, as set forth in 40 CFR 166.24, until this year's request.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing a use for which there has been an emergency exemption requested or granted in any 3 previous years, and a complete application for registration of the use and/or a petition for tolerance for residues in or on the commodity has not been submitted to the Agency. Such notice provides for opportunity for public comment on the

application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the South Carolina Department of Fertilizer and Pesticide Control.

Dated: February 19, 1993.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-4663 Filed 3-2-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-60045; FRL-4189-6]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 5 Registration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(b) and section (3)(2)(B) of FIFRA.

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A-110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally

effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice requirements. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e. all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308–8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List

Attachment II - Requirement List

Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

TABLE A.—LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Airco Gases, Carbon Dioxide Division	03871900005	Carbon and CO2	Carbon Dioxide	01/27/93
Atlas Chemical Corp	01055100001	Inorganic Nitrate/Nitrite	The Giant Destroyer	01/27/93
Dorsey, Inc.	04373900010	Silicon Dioxide	Shellshock Insecticide	01/26/93
Miller Chemical and Fertilizer Corporation	00007200574	Capsaicin	Miller Hot Sauce Animal Repellent	01/25/93
Nott Manufacturing Company Inc.	00035800137	Inorganic Nitrate/Nitrite	Smoke'em	01/27/93
Southern Mill Creek Products	00672000379	Silica Gel	Superior Drione	01/26/93
State Chemical Manufacturing Co.	00168500053	Silica Gel	797-A State Powdered Insecticide	01/26/93
Sungro Chemicals Inc.	01147400064	Silica Gel	Sun-Dust Roach Away	01/26/93
Sureco, Inc.	00076900569	Silica Gel	Stephenson Chemicals D.P.S. Roach Powder	01/26/93

TABLE A.—LIST OF PRODUCTS—Continued

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Wallace C. Tharp	00633000032	Silicon Dioxide	Perma-Guard Pet and Animal Insecticide D-20	01/26/93
	00633000001	Silicon Dioxide	Perma-Guard Household Insecticide D-20	01/26/93
	00633000009	Silicon Dioxide	Perma Guard Garden & Plant Insecticide D-21	01/26/93
	00633000012	Silicon Dioxide	Perma-Guard Kleen Bin Insecticide D-20	01/26/93
	00633000031	Silicon Dioxide	Perma Guard D-20 Professional Insecticide	01/26/93
Whitmire Research Laboratories, Inc.	00049900223	Silica Gel	Whitmire PT 230 TRI-DIE	01/26/93
Xtrium Labs Inc.	00546400006	Capsaicin	Shock Repellent	01/26/93

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

TABLE B.—LIST OF REQUIREMENTS

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due Date
Carbon and CO2	Airco Gases, Carbon Dioxide Division	Confidential Statement of Formula (CSF) Form		11/02/92
		Certification Form: Data Compensation		11/02/92
		Chemical Identity	61–1	11/02/92
		Beginning Material and Manuf Process	61–2(a)	11/02/92
		Certification of Ingredient Limits	62–2	11/02/92
		Analytical Method to Verify Certified Limits	62–3	11/02/92
		Color	63–2	11/02/92
		Physical State	63–3	11/02/92
		Odor	63–4	11/02/92
		Density, Bulk Density, or Specific Gravity	63–7	11/02/92
		Oxidizing/Reducing Action	63–14	11/02/92
		Explodability	63–16	11/02/92
		Storage Stability	63–17	11/02/92
		Corrosion Characteristics	63–20	11/02/92
	ADM Corn Processing	Confidential Statement of Formula (CSF) Form		11/02/92
		Certification Form: Data Compensation		11/02/92
		Chemical Identity	61–1	11/02/92
		Beginning Material and Manuf Process	61–2(a)	11/02/92
		Certification of Ingredient Limits	62–2	11/02/92
		Analytical Method to Verify Certified Limits	62–3	11/02/92
		Color	63–2	11/02/92
		Physical State	63–3	11/02/92
		Odor	63–4	11/02/92
		Density, Bulk Density, or Specific Gravity	63–7	11/02/92
		Oxidizing/Reducing Action	63–14	11/02/92
		Explodability	63–16	11/02/92
		Storage Stability	63–17	11/02/92
		Corrosion Characteristics	63–20	11/02/92
Capsaicin	Miller Chemical and Fertilizer Corporation	90-Day Response		12/08/92
	Sevana Co.	90-Day Response		12/08/92
	Xttrium Labs Inc.	90-Day Response		12/08/92
Inorganic Nitrate/Nitrite	Nott Manufacturing Company Inc.	Beginning Material and Manuf Process	61–2(a)	10/22/92
	Atlas Chemical Corp	Certification Form: Data Compensation		10/22/92
		Beginning Material and Manuf Process	61–2(a)	10/22/92
		Analytical Method to Verify Certified Limits	62–3	10/22/92
		Color	63–2	10/22/92
		Physical State	63–3	10/22/92
		Odor	63–4	10/22/92
		Density, Bulk Density, or Specific Gravity	63–7	10/22/92
		Oxidizing/Reducing Action	63–14	10/22/92
		Explodability	63–16	10/22/92
		Storage Stability	63–17	10/22/92
		Corrosion Characteristics	63–20	10/22/92
Silica Gel	Whitmire Research Laboratories, Inc.	Confidential Statement of Formula (CSF) Form		10/27/92
		Product Specific Data Report Form		10/27/92
		Chemical Identity	61–1	10/27/92
		Beginning Material and Manuf Process	61–2(a)	10/27/92
		Discussion of Impurities	61–2(b)	10/27/92
		Preliminary Analysis of Product Samples	62–1	10/27/92
		Certification of Ingredient Limits	62–2	10/27/92
		Analytical Method to Verify Certified Limits	62–3	10/27/92
		Color	63–2	10/27/92
		Physical State	63–3	10/27/92
		Odor	63–4	10/27/92
		Melting Point	63–5	10/27/92

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due Date
		Boiling Point	63–6	10/27/92
		Density, Bulk Density, or Specific Gravity	63–7	10/27/92
		Solubility	63–8	10/27/92
		Vapor Pressure	63–9	10/27/92
		Dissociation Constant	63–10	10/27/92
		Octanol/Water Partition Coefficient	63–11	10/27/92
		pH	63–12	10/27/92
		Stability	63–13	10/27/92
		Oxidizing/Reducing Action	63–14	10/27/92
		Flammability	63–15	10/27/92
		Explodability	63–16	10/27/92
		Storage Stability	63–17	10/27/92
		Viscosity	63–18	10/27/92
		Miscibility	63–19	10/27/92
		Corrosion Characteristics	63–20	10/27/92
		Dielectric Breakdown Voltage	63–21	10/27/92
		Acute Oral Toxicity - Rat	81–1	10/27/92
		Acute Dermal Toxicity - Rabbit/Rat	81–2	10/27/92
		Acute Inhalation Toxicity - Rat	81–3	10/27/92
		Primary Eye Irritation - Rabbit	81–4	10/27/92
		Primary Dermal Irritation	81–5	10/27/92
		Dermal Sensitization	81–6	10/27/92
	Sureco, Inc.	Confidential Statement of Formula (CSF) Form		10/27/92
		Product Specific Data Report Form		10/27/92
		Chemical Identity	61–1	10/27/92
		Beginning Material and Manuf Process	61–2(a)	10/27/92
		Discussion of Impurities	61-2(b))	10/27/92
		Preliminary Analysis of Product Samples	62-1	10/27/92
		Analytical Method to Verify Certified Limits	62–3	10/27/92
		Color	63–2	10/27/92
		Physical State	63–3	10/27/92
		Odor	No: 63–4	10/27/92
		Melting Point	63–5	10/27/92
		Boiling Point	63–6	10/27/92
		Density, Bulk Density, or Specific Gravity	63–7	10/27/92
		Solubility	63–8	10/27/92
		Vapor Pressure	63–9	10/27/92
		Dissociation Constant	63–10	10/27/92
		Octanol/Water Partition Coefficient	63–11	10/27/92
		pH	63–12	10/27/92
		Stability	63–13	10/27/92
		Oxidizing/Reducing Action	63–14	10/27/92
		Flammability	63–15	10/27/92
		Explodability	63–16	10/27/92
		Storage Stability	63–17	10/27/92
		Viscosity	63–18	10/27/92
		Miscibility	63–19	10/27/92
		Corrosion Characteristics	63–20)	10/27/92
		Dielectric Breakdown Voltage	63–21	10/27/92
		Acute Oral Toxicity - Rat	81–1	10/27/92
		Acute Dermal Toxicity - Rabbit/Rat	81–2	10/27/92
		Acute Inhalation Toxicity - Rat	81–3	10/27/92
		Primary Eye Irritation - Rabbit	81–4	10/27/92
		Primary Dermal Irritation	81–5	10/27/92
		Dermal Sensitization	81–6	10/27/92
	Southern Mill Creek Products	Confidential Statement of Formula (CSF) Form		10/27/92
		Product Specific Data Report Form		10/27/92
		Chemical Identity	61–1	10/27/92
		Beginning Material and Manuf Process	61–2(a)	10/27/92
		Discussion of Impurities	61-2(b)	10/27/92
		Preliminary Analysis of Product Samples(	62–1	10/27/92
		Certification of Ingredient Limits	62–2	10/27/92
		Analytical Method to Verify Certified Limits	62–3	10/27/92
		Color	63–2	10/27/92
		Physical State	63–3	10/27/92
		Odor	63–4	10/27/92
		Melting Point	63–5	10/27/92
		Boiling Point	63–6	10/27/92
		Density, Bulk Density, or Specific Gravity	63–7	10/27/92
		Solubility	63–8	10/27/92
		Vapor Pressure	63–9	10/27/92
		Dissociation Constant	63–10	10/27/92
		Octanol/Water Partition Coefficient	63–11	10/27/92
		pH	63–12	10/27/92
		Stability	63–13	10/27/92
		Oxidizing/Reducing Action	63–14	10/27/92
		Flammability	63–15	10/27/92
		Explodability	63–16	10/27/92
		Storage Stability	63–17	10/27/92
		Viscosity	63–18	10/27/92

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due Date
		Miscibility	63–19	10/27/92
		Corrosion Characteristics	63–20	10/27/92
		Dielectric Breakdown Voltage	63–21	10/27/92
		Acute Oral Toxicity - Rat	81–1	10/27/92
		Acute Dermal Toxicity - Rabbit/Rat	81–2	10/27/92
		Acute Inhalation Toxicity - Rat	81–3	10/27/92
		Primary Eye Irritation - Rabbit	81–4	10/27/92
		Primary Dermal Irritation	81–5	10/27/92
		Dermal Sensitization	81–6	10/27/92
	State Chemical Manufacturing Co.	Confidential Statement of Formula (CSF) Form		10/27/92
		Product Specific Data Report Form		10/27/92
		Certification Form: Data Citation		10/27/92
		Certification Form: Offer to Cost Share		10/27/92
	Sungro Chemicals. Inc.	Confidential Statement of Formula (CSF) Form		10/27/92
		Product Specific Data Report Form		10/27/92
		Certification Form: Data Citation		10/27/92
		Certification Form: Offer to Cost Share		10/27/92
Silicon Dioxide	Dorsey, Inc.	Confidential Statement of Formula (CSF) Form		10/27/92
		Product Specific Data Report Form		10/27/92
		Chemical Identity	61–1	10/27/92
		Beginning Material and Manuf Process	61-2(a)	10/27/92
		Discussion of Impurities	61-2(b)	10/27/92
		Preliminary Analysis of Product Samples	62-1	10/27/92
		Certification of Ingredient Limits	62-2	10/27/92
		Analytical Method to Verify Certified Limits	62-3	10/27/92
		Color	63-2	10/27/92
		Physical State	63-3	10/27/92
		Odor	63-4	10/27/92
		Melting Point	63-5	10/27/92
		Boiling Point	63-6	10/27/92
		Density, Bulk Density, or Specific Gravity	63-7	10/27/92
		Solubility	63-8	10/27/92
		Vapor Pressure	63-9	10/27/92
		Dissociation Constant	63-10	10/27/92
		Octanol/Water Partition Coefficient	63-11	10/27/92
		pH	63-12	10/27/92
		Stability	63-13	10/27/92
		Oxidizing/Reducing Action	63-14	10/27/92
		Flammability	63-15	10/27/92
		Explodability	63-16	10/27/92
		Storage Stability	63-17	10/27/92
		Viscosity	63-18	10/27/92
		Miscibility	63-19	10/27/92
		Corrosion Characteristics	63-20	10/27/92
		Dielectric Breakdown Voltage	63-21	10/27/92
		Acute Oral Toxicity - Rat	81-1	10/27/92
		Acute Dermal Toxicity - Rabbit/Rat	81–2	10/27/92
		Acute Inhalation Toxicity - Rat	81–3	10/27/92
		Primary Eye Irritation - Rabbit	81–4	10/27/92
		Primary Dermal Irritation	81–5	10/27/92
		Dermal Sensitization	81–6	10/27/92
	Wallace C. Tharp	Confidential Statement of Formula (CSF) Form		12/05/92
		Acute Oral Toxicity - Rat	81–1	12/05/92
		Acute Dermal Toxicity - Rabbit/Rat	81–2	12/05/92
		Acute Inhalation Toxicity - Rat	81–3	12/05/92
		Primary Eye Irritation - Rabbit	81–4	12/05/92
		Primary Dermal Irritation	81–5	12/05/92
		Dermal Sensitization	81–6	12/05/92

IV. Attachment III Suspension Report--Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

A. Carbon and CO2

On January 29, 1992, EPA issued the Phase 5 Reregistration Data Requirements Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing Carbon and CO2 to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g)(2)(B) of FIFRA.

The Carbon and CO2 Phase 5 Reregistration Data Requirements Notice dated January 29, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a response from you in which you committed to undertake the required testing. The Notice further required that data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

B. Capsaicin

On August 17, 1992, EPA issued the Phase 5 Reregistration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(B) and 3(c)(2)(B) of FIFRA which required registrants of products containing capsaicin used as an active ingredient to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g). Failure to comply with the requirements of a Phase 5 Reregistration Eligibility Document Data Call-In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Capsaicin Phase 5 Reregistration Eligibility Document Data Call-In Notice dated August 17, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. Because the Agency has not received a response from you as a capsaicin registrant to undertake the required testing or any other appropriate response, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

C. Silica Gel

On February 27, 1992, EPA issued the Phase 5 Reregistration Data Requirements Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing silicon dioxide and silica gel to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g)(2)(B) of FIFRA.

The Silicon Dioxide and Silica Gel Phase 5 Reregistration Data Requirements Notice dated February 27, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a response from you in which you committed to undertake the required testing. The Notice further required that data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

D. Silicon Dioxide

On February 27, 1992, EPA issued the Phase 5 Reregistration Data Requirements Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing silicon dioxide and silica gel to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g)(2)(B) of FIFRA.

The Silicon Dioxide and Silica Gel Phase 5 Reregistration Data Requirements Notice dated February 27, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a response from you in which you committed to undertake the required testing. The Notice further required that data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

E. Inorganic Nitrate/Nitrite

On January 13, 1992, EPA issued the Phase 5 Reregistration Data Requirements Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing inorganic nitrate/nitrite to develop and submit data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g)(2)(B) of FIFRA.

The Inorganic Nitrate/Nitrite Phase 5 Reregistration Data Requirements Notice dated January 13, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a response from you in which you committed to undertake the required testing. The Notice further required that data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: February 22, 1993.

Connie S. Musgrove,

Acting Director, Office of Compliance Monitoring.

[FR Doc. 93–4666 Filed 3–2–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50755; FRL–4573–8]

Receipt of Application for An Experimental Use Permit; Genetically Engineered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application (EUP No. 58788–EUP–A) from Crop Genetics International (CGI) requesting an experimental use permit for a genetically engineered microbial pesticide. The first EUP on this organism was issued June 14, 1988 (EUP No. 58788–EUP–1). The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before April 2, 1993.

ADDRESSES: Comments in triplicate, must bear the docket control number OPP–50755 and be submitted 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. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked, will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA

without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7690).

SUPPLEMENTARY INFORMATION: An application for an EUP has been received from Crop Genetics International of 7170 Standard Drive, Hanover, MD 21076. This EUP application EPA File Symbol is 58788-EUP-A. The proposed experiment involves the endophytic (plant-dwelling) bacterium *Clavibacter xyli* subspecies *cynodontis* that has been genetically engineered to contain a delta-endotoxin gene obtained from *Bacillus thuringiensis* subspecies *kurstaki*. After inoculation, the endophytic bacterium grows within the corn plants and produces the pesticidal agent which is active against the larval stages of the European corn borer (ECB), *Ostrinia nubilalis*. The product is referred to as Cxc/Bt.

Field activity of the Cxc/Bt construction (MDR1.586) against the ECB was demonstrated in several field corn hybrids during the 1991 and 1992 field tests. Therefore, the purpose of this EUP application is to conduct small-scale Cxc/Bt recombinant field trials to evaluate further insecticidal activity of one or more new Cxc/Bt constructions against ECB in several corn genotypes of commercial interest in Maryland, Nebraska, and Iowa. Data on the incidence of Cxc/Bt colonization, population levels of Cxc/Bt, and activity of Cxc/Bt will be obtained during the growing season. In addition, genetic segregation of the Cxc/Bt constructions will be studied using colonies isolated from plants in these field tests.

CGI is proposing to test several constructions genetically similar to those constructs previously tested (MDR1.586 and MDR1.1413) at small-scale sites in 1993: Ingleside, Queen Anne's County, Maryland; Hastings, Clay County, Nebraska; and at 8 out of 12 additional sites in Iowa to include: Hampton, Franklin County; Badger, Webster County; Odebolt, Sac County; Grinnell, Poweshiek County; Readlyn, Brower County; Havelock, Pocahontas County; Slater, Story County; Boone, Boone County; Maxwell, Story County; Oskaloosa, Mahaska County; Winterset, Madison County; and Humeston, Wayne County. Each site in Maryland and Nebraska will occupy approximately 49,000 ft^2 or 1.1 acres and consist of a maximum of four field corn genotypes and four recombinant strains of Cxc/Bt. In Iowa, test sites will occupy approximately 13,950 ft^2 or 0.32 acre and consist of a maximum of three field corn genotypes and three recombinant strains of Cxc/Bt. All test sites will consist of two uninoculated buffer rows planted between each sub-subplot and along the periphery of the test plot for each test site. Test sites at both the Maryland and Nebraska locations will be designed: (1) To evaluate the activity of several Cxc/Bt constructions against ECB in four corn genotypes and (2) determine the resulting grain yield of each treatment. Treatments will be introduced into seed via seed-inoculation and will include a control (phosphate buffered saline), and up to four Cxc/Bt constructions. Thus, a total of five treatments across four corn genotypes may be included in these tests. Tests at both sites will be initiated at planting and will continue through harvest. Planting will take place between early April and late May. Test sites in Iowa will be designed: (1) To evaluate the activity of several Cxc/Bt constructions in three corn genotypes against ECB, (2) assess the yield of Cxc/Bt-inoculated plants in the absence of ECB pressure (a measure of theoretical yield potential), and (3) determine the yield benefit of plants treated with Cxc/Bt when subjected to ECB. The tests will consist of three factors: hybrid, seed-inoculation treatment, and ECB status. Three field corn genotypes will be evaluated. Up to four treatments will be introduced via seed-inoculation. The seed-inoculation treatments will include a control (phosphate buffered saline) and up to three Cxc/Bt constructions. In addition, each hybrid X treatment combination will be exposed to two ECB conditions: ECB "present" (heavily infested), and ECB "absent" (non-infested and standard methods will be used to control ECB). Thus, a total of eight treatment combinations across three hybrids may be included in these tests. Test sites will be initiated at planting and will continue through harvest. Planting will take place between early April and late May. The proposed field test sites in Maryland, Nebraska, and Iowa would allow the use of 1.0 kg active ingredient on seeds and plants sufficient to plant approximately 4.8 test plot acres. The actual amount of active ingredient present in the seeds after seed inoculation is estimated to be not more than 6 g. The amount active ingredient requested per State is less than 2.0 g. Upon completion of the tests, all plant debris and stubble will be incorporated into the soil by disking. Harvested grain will be discarded by either (1) Spreading the grain onto the test site, or (2) transporting the grain in sealed containers to a field station and discarding at a designated site. Based on previous data (EUP No. 58788-EUP-1, Vol. 2, MRID No. 4045401, EUP No. 58788-EUP-2, Vol. II, MRID No. 40920401, and Report on 1989 Field Trails Conducted Pursuant to EUP No. 58788-EUP-2, Vol. X and XI, MRID Nos. 41337009 and 41337010), extensive monitoring performed during 1990 as presented in Extension of EUP No. 58788-EUP-4, Vol. VIII, MRID No. 41707707, and additional information provided in Vol. V of the current submission, no overwintering of Cxc/Bt is anticipated.

The labeling proposed by CGI that would govern the conduct of the experiment states:

> Applicator should wear protective clothing and waterproof gloves. For use only in accordance with the terms and conditions of the experimental use permit.

Following the review of the CGI application and any comments received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the Federal Register.

Dated: February 23, 1993.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-4665 Filed 3-2-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180884; FRL-4188-6]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 10 States as listed below. Three crisis exemptions were initiated by the various States. Two quarantine exemptions were also granted to the United States Department of Agriculture, and one was granted to the California Environmental Protection Agency. These exemptions, issued during the months of October,

November, and December 1992, except for the one in May and one in September, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied two exemptions from the Louisiana Department of Agriculture and Forestry and one from the Texas Department of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, quarantine, and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–305–5806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of dicamba on cotton to control redvine; October 8, 1992, to December 1, 1992. (Susan Stanton)

2. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of sodium tetrathiocarbonate on wine grapes to control grape *Phylloxera*; November 27, 1992, to November 26, 1993. A solicitation of public comment was published in the **Federal Register** of October 19, 1992 (57 FR 47642); no comments were received. The Agency has issued this exemption on the basis that the presence of a new strain (biotype B) of phylloxera and the cancellation of carbofuran permits in Mendocino, Napa, and Sonoma counties have created an urgent nonroutine situation that would result in substantial losses. The availability of sodium tetrathiocarbonate will allow growers to defer replanting costs over a longer period of time, thereby reducing the economic impacts. The use can be toxicologically supported. The use is not expected to cause unreasonable adverse effects on nontarget organisms or the environment. (Susan Stanton)

3. California Environmental Protection Agency for the use of fenamiphos on broccoli and cauliflower to control nematodes; November 9, 1992, to November 8, 1993. (Libby Pemberton)

4. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of myclobutanil on strawberries to control powdery mildew; October 5, 1992, to July 27, 1993. California had initiated a crisis exemption for this use. (Susan Stanton)

5. California Environmental Protection Agency, for the use of prometryn on parsley to control burning nettle, cheeseweed, and shepherd's purse; December 24, 1992, to December 24, 1993. (Andrea Beard)

6. Florida Department of Agriculture and Consumer Services for the use of avermectin B_1 on strawberries to control spider mites; November 5, 1992, to July 31, 1993. (Larry Fried)

7. Florida Department of Agriculture and Consumer Services for the use of cyromazine on tomatoes to control leafminers; October 28, 1992, to October 27, 1993. (Libby Pemberton)

8. Florida Department of Agriculture and Consumer Services for the use of lactofen on tomatoes and green peppers to control nightshade and parthenium; November 26, 1992, to August 31, 1993. (Larry Fried)

9. Florida Department of Agriculture and Consumer Services for the use of cyromazine on potatoes to control leafminers; October 5, 1992, to July 1, 1993. (Susan Stanton)

10. Georgia Department of Agriculture for the use of streptomycin on onions to control *Pseudomonas virdiflava*; December 31, 1992, to June 30, 1993. (Susan Stanton)

11. Georgia Department of Agriculture for the use of sethoxydim on canola to control Italian ryegrass; October 28, 1992, to April 15, 1993. (Susan Stanton)

12. Idaho Department of Agriculture for the use of pendimethalin on mint to control kochia and redroot pigweed; November 20, 1992, to April 1, 1993. (Larry Fried)

13. Idaho Department of Agriculture for the use of imazalil on sweet corn seed to control damping-off and dieback diseases; October 2, 1992, to October 1, 1993. (Susan Stanton)

14. Louisiana Department of Agriculture and Forestry for the use of dicamba on cotton to control redvine; November 3, 1992, to December 1, 1992. (Susan Stanton)

15. Mississippi Department of Agriculture and Commerce for the use of dicamba on cotton to control redvine; October 8, 1992, to December 1, 1992. (Susan Stanton)

16. Pennsylvania Department of Agriculture for the use of chlorothalonil on mushrooms to control verticillium diseases; October 5, 1992, to October 1, 1993. Pennsylvania had initiated a crisis exemption for this use. (Susan Stanton)

17. Texas Department of Agriculture for the use of fenpropathrin on tomatoes to control the sweet potato whitefly; October 5, 1992, to October 5, 1993. (Andrea Beard)

18. Washington Department of Agriculture for the use of pendimethalin on mint to control kochia and redroot pigweed; November 20, 1992, to April 1, 1993. (Larry Fried)

19. United States Department of Agriculture for the use of naled on tree trunks, utility poles, and inanimate objects to control the Oriental fruit fly (*Bactrocera orientales*), and *Dacus* spp.; December 23, 1992, to December 16, 1995. (Libby Pemberton)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on May 28, 1992, for the use of fomesafen on snap beans to control broadleaf weeds. This program has ended. (Larry Fried)

2. Illinois Department of Agriculture on September 4, 1992, for the use of avermectin on snap beans to control puncture vine. This program has ended. (Larry Fried)

3. Michigan Department of Agriculture on October 13, 1992, for the use of iprodione on canola to control alternaria brassicicola. This program has ended. (Libby Pemberton)

Quarantine exemptions were granted to the:

1. California Environmental Protection Agency, Department of Pesticide Regulations, for the use of malathion on various food and feed crops to eradicate exotic (non-established, quarantined) members of the fruit fly family Tephritidae; December 18, 1992, to December 17, 1995. (Susan Stanton)

2. United States Department of Agriculture for the use of methyl bromide on pineapples, plaintains, melons, avocados, chayote, apuntia, raspberries, blackberries, bananas, asparagus, and grapes to control certain plant pests new to, or not known to be widely distributed within and throughout the United States and its territories at ports of entry throughout the United States; October 13, 1992, to October 12, 1995. USDA had initiated a crisis exemption for use on asparagus only. (Libby Pemberton)

3. United States Department of Agriculture for the use of methy bromide on various imported foods to control various plant pests not currently established in the United States; November 27, 1992, to November 26, 1995. (Libby Pemberton)

EPA has denied specific exemption requests from the:

1. Louisiana Department of Agriculture and Forestry for the use of

iprodione as a postharvest treatment on sweet potatoes to control rhizopus soft rot. (Susan Stanton)

2. Louisiana Department of Agriculture and Forestry for the use of iprodione on sweet potatoes to control sclerotial blight. (Susan Stanton)

3. Texas Department of Agriculture for the use of cyromazine on peppers to control vegetable leafminers. (Susan Stanton)

Authority: 7 U.S.C. 136.

Dated: February 22, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93-4667 Filed 3-2-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180887; FRL 4573-1]

Receipt of Application for Emergency Exemption to use Fenpropathrin; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") to use the pesticide fenpropathrin (CAS 39515-41-8) to treat up to 50,000 acres of tomatoes to control the sweet potato whitefly (SPWF). The Applicant proposes the first food use of an active ingredient; therefore, 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 March 18, 1993.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180887," should be submitted by mail 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. 1132, 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. 1132, 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: Andrea Beard, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-7890).

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 Danitol 2.4 EC Spray (fenpropathrin) on tomatoes to control the SPWF. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The SPWF was discovered in Florida in 1900 and has been a pest in the "desert-cropping systems" in California and Arizona for some time. It is common on many wild and cultivated crops such as tomatoes, cotton, cucurbits and solanaceae. The Applicant states that the SPWF first caused economic impacts in Florida in 1987, and since then, its impacts have rapidly expanded over the total production area. The SPWF causes direct damage to the tomato plant through its feeding activity and the production of honeydew which enhances sooty mold development. The SPWF is also considered responsible for the introduction and distribution of at least one geminivirus (which can lead to extreme yield losses), and also causes a physiological disorder resulting in irregular ripening of fruit. The Applicant claims that without control of the SPWF, the overall tomato industry in Florida can anticipate production losses of about 40-50 percent. This translates to a net loss of $1,922 per acre.

The Applicant proposes to apply Danitol 2.4 EC Spray at a maximum rate of 0.2 pounds active ingredient per acre with a maximum of 6 applications on up to 50,000 acres of tomatoes. This amounts to 25,000 gallons of product, or 60,000 pounds of active ingredient. This is the third year that the Applicant has applied for the use of fenpropathrin on tomatoes, and permission for this use was granted for the past 2 years under section 18 to both Florida and Texas. This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing the first food use of a registered chemical. Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Florida Department of Agriculture and Consumer Services.

Dated: February 22, 1993.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-4664 Filed 3-2-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-66172; FRL 4188-1]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by June 1, 1993, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 703-305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 37 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000059–00193	Flair	Butoxypolypropylene glycol 1-Napthyl-*N*-methylcarbamate *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
000134–00039	Hess & Clark Six Roost Paint	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000279 IN–92–0001	Command 4EC	2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone
000279 OH–92–0001	Command 4EC	2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone
000400 OR–76–0005	Vitavax Flowable Fungicide	5,6-Dihydro-2-methyl-1,4-oxathiin-3-carboxanalide
000432–00744	Roost No More Bird Repellent	Polybutene
000432–00745	Roost No More Repells Nuisance Birds	Polybutene
000655–00080	Prentox Malathion 25% WP	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000655–00123	Prentox Malathion 8 Lb. Emulsifiable Concentrate	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000655–00149	Prentox 80% Malathion Emulsifiable Concentrate	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000655–00323	Prentox Malathion 5 Lb. Emulsifiable Concentrate Premium	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000655–00550	10% Malathion Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000876 MT–79–0004	Banvel D Herbicide	Dimethylamine 3,6-dichloro-*o*-anisate
001386–00576	Unico Snail and Slug Pellets-M	4-(Methylthio)-3,5-xylyl methylcarbamate
002792–00055	Peach, Nectarine & Plum Luster 274 with Fungicides	2,6-Dichloro-4-nitroaniline Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
002935 OR–79–0044	Red-Top Malathion 25 Spray Powder	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
003125 OR–76–0017	Morestan 25% Wettable Powder Miticide	6-Methyl-2,3-quinoxalinedithiol cyclic *S,S*-dithiocarbonate
003125 OR–77–0067	Meta-Systox-R Spray Concentrate	*S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate
003772–00007	Earl May 57% Malathion Spray	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate Xylene range aromatic solvent
005887–00030	Pelletized Warf with Prolin	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
005887–00129	Black Leaf Benomyl Systemic Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
007969–00022	U-46D Acid Manufacturers Concentrate	2,4-Dichlorophenoxyacetic acid
008006–00008	Easy Cattle Oil	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
020954 AZ–91–0015	Solicam DF Herbicide	4-Chloro-5-(methylamino)-2-(alpha,alpha,alpha-trifluor o-*m*-tolyl)-3(2H)-
034704–00575	Hopkins Mesrepel	4-(Methylthio)-3,5-xylyl methylcarbamate
036301–00011	J-Mal-92 Premium Grade Malathion Agricultural Insecticide	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
047000–00009	Malathion 5-E Grain Protectant Contains Cythion	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
047000–00010	2% Malathion Backrubber Solution	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
047000–00022	Economy Mal-Thox Dust	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
047000–00024	Economy's 57% Malathion Emulsifiable Concentrate	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
047000–00037	Economy Malathion 5% Dust Insecticide	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
055947 CO–88–0006	Banvel Herbicide	Dimethylamine 3,6-dichloro-*o*-anisate
055947 ND–87–0009	Banvel Herbicide	Dimethylamine 3,6-dichloro-*o*-anisate
055947 SD–87–0001	Banvel Herbicide	Dimethylamine 3,6-dichloro-*o*-anisate
055947 SD–87–0005	Banvel Herbicide	Dimethylamine 3,6-dichloro-*o*-anisate
055947 WY–87–0002	Banvel Herbicide	Dimethylamine 3,6-dichloro-*o*-anisate
059639 CA–90–0011	Slug-Geta Snail & Slug Bait (pelleted)	4-(Methylthio)-3,5-xylyl methylcarbamate

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000059	Coopers Animal Health Inc., 1201 Douglas Ave., Kansas City, KS 66103.
000134	Hess & Clark, Inc., 7th & Orange, Ashland, OH 44805.
000279	FMC Corp., ACG Speciality Products, 1735 Market Street, Philadelphia, PA 19103.
000400	Uniroyal Chemical Co., Inc., 74 Amity Rd, Bethany, CT 06524.
000432	Roussel UCLAF Corp., 170 Beaver Brook Rd, Lincoln Park, NJ 07035.
000655	Prentiss Inc., C. B. 2000, Floral Park, NY 11002.
000876	Velsicol Chemical Corp., 10400 W. Higgins Rd., Suite 600, Rosemont, IL 60018.
001386	Universal Cooperatives Inc., Box 460, 7801 Metro Parkway, Minneapolis, MN 55440.
002792	ELF Atochem N.A. Inc., Decco Division, Three Parkway, Philadelphia, PA 19102.
002935	Wilbur Ellis Co., 191 W. Shaw Ave, Fresno, CA 93704.
003125	Miles Inc., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
003772	Earl May Seed & Nursery L.P., c/o Bonide Products Inc., 2 Wurz Ave, Yorkville, NY 13495.
005887	Wilbur-Ellis Co., Box 9518, Fresno, CA 93792.
007969	BASF Corp., Agricultural Chemicals Group, Box 13528, Research Triangle Park, NC 27709.
008006	Easy Chemical & Mfg Co., Inc., R R 1, Seward, NE 68434.
020954	Sandoz Crop Protection Corp., Zoecon Research Institute, 12200 Denton Dr, Dallas, TX 75234.
034704	Platte Chemical Co., Inc., c/o Willaim M. Mahlburg, Box 667, Greeley, CO 80632.
036301	Degesch America, Inc., Houston Division, 14802 Park Almeda Drive, Box 451036, Houston, TX 77245.
047000	Chem-Tech, Ltd, 4515 Fleur Dr., #303, Des Moines, IA 50321.
055947	Sandoz Agro, Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018.
059639	Valent U.S.A. Corp., 1333 N. California Blvd., Box 8025, Walnut Creek, CA 94596.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before June 1, 1993. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: February 19, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–4668 Filed 3–2–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–240102; FRL–4185–4]

State Registrations of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 18 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register**.

DATES: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Edith Minor, Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 226, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5263.

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c)

applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in September through November of 1992. Receipts-of-State registrations will be published periodically. Of the following registrations, one involves a changed-use pattern (CUP). The term "changed use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Alablama

EPA SLN No. AL 92 0007. Ciba-Geigy Corp. Registration is for Profenofos to be used on cotton to control insects and mites. September 1, 1992.

Arizona

EPA SLN No. AZ 92 0010. Gowan Co. Registration is for Dimethoate to be used on citrus to control thrips. November 20, 1992.

EPA SLN No. AZ 92 0011. Gowan Co. Registration is for Diazinon to be used on Chinese cabbage to control mile cricket, fleas, and cucumber beetles. November 20, 1992.

California

EPA SLN No. CA 92 0016. Great Lakes Chem Corp. Registration is for Methyl Bromide to be used on coffee beans to control coffee rust disease. September 1, 1992.

EPA SLN No. CA 92 0018. Rohm & Haas Co. Registration is for Oxyfluorfen to be used on garlic to control broadleaf weeds. September 1, 1992.

EPA SLN No. CA 92 0019. ICI Americas, Inc. Registration is for Permethrin to be used on alfalfa to control cutworms. September 1, 1992.

EPA SLN No. CA 92 0021. Rohm & Haas Co. Registration is for Myclobutanil to be used on ornamental plants to control rust and leaf spot mildew. September 1, 1992.

EPA SLN No. CA 92 0022. Gowan Co. Registration is for Diazinon to be used on broccoli Raab (rapini) to control diamondback moth. September 30, 1992.

EPA SLN No. CA 92 0024. Pace International, L.P. Registration is for Metaldehyde to be used on prickly pear cactus to control slugs and snails. September 30, 1992.

EPA SLN No. CA 92 0025. Miles, Inc. Registration is for Di-Syston to be used on bermuda grass seed crops to control mealybugs, white flies, and thrips. October 2, 1992.

EPA SLN No. CA 92 0026. Rohm & Haas Co. Registration is for Dicofol to be used on cantaloupe, melons, squash and cucumbers to control mites. October 7, 1992.

EPA SLN No. CA 92 0027. Miles, Inc. Registration is for Bayleton 25 Turf to be used on western red cedar to control cedar leaf blight. October 21, 1992.

Florida

EPA SLN No. FL 92 0008. Haco, Inc. Registration is for Carbaryl to be used on fresh dill to control moles, crickets, and cutworms. September 21, 1992.

EPA SLN No. FL 92 0009. DowElanco. Registration is for Chlorpyrifos to be used on peppers to control beet armyworms. October 6, 1992.

EPA SLN No. FL 92 0010. Dowelanco. Registration is for Chlorpyrifos to be used on tomatoes to control various insects. October 6, 1992.

EPA SLN No. FL 92 0012. Miles, Inc. Registration is for Methamidophos to be used on lettuce to control aphids and cutworm. November 24, 1992.

Hawaii

EPA SLN No. HI 92 0007. ICI Americas, Inc. Registration is for Napropamide to be used on basil to control grasses and weeds. November 20, 1992.

EPA SLN No. HI 92 0009. Drexel Chemical Co. Registration is for Sulfur to be used on papayas to control mites. September 29, 1992.

EPA SLN No. HI 92 0010. Drexel Chemical Co. Registration is for Sulfur to be used on macadamia nuts to control broad mites. September 29, 1992.

Louisiana

EPA SLN No. LA 92 0011. American Cyanamid Co. Registration is for Phorate to be used on sugarcane to control wireworms. September 2, 1992.

EPA SLN No. LA 92 0012. K-I Chemical U.S.A., Inc. Registration is for Thiobencarb to be used on rice to control redstem, cheat, annual weeds, and aquatic weeds. October 21, 1992.

EPA SLN No. LA 92 0013. K-I Chemical U.S.A., Inc. Registration is for Thiobencarb to be used on rice to control aquatic weeds. October 21, 1992.

EPA SLN No. LA 92 0014. Platte Chemical Co., Inc. Registration is for Phorate to be used on sugarcane to control wireworms. November 2, 1992.

Missouri

EPA SLN No. MO 92 0005. Valent U.S.A. Corp. Registration is for Thiobencarb to be used on rice to control grasses and aquatic weeds. September 14, 1992.

EPA SLN No. MO 92 0006. Dearborn Division. Registration is for Dearcide 723 to be used in water systems to control bacteria. September 29, 1992.

Montana

EPA SLN No. MS 92 0009. Ciba-Geigy Corp. Registration is for Cyromazine to be used on cotton gin trash to control flies. September 10, 1992.

Nebraska

EPA SLN No. NE 92 0007. E. I. du Pont DeNemours & Co., Inc. Registration is for Metsulfuron to be used on rangelands and in pastures to control weeds. October 2, 1992.

EPA SLN No. NE 92 0008. E. I. du Pont DeNemours & Co., Inc. Registration is for Finesse Herbicide to be used on winter wheat to control weeds and grasses. October 2, 1992.

North Carolina

EPA SLN No. NC 92 0012. ISK Biotech Corp. Registration is for Chlorothalonil to be used on peaches to control peach scab. November 30, 1992.

EPA SLN No. NC 92 0013. FMC Corp. Registration is for Permethrin to be used on conifer nurseries to control weevils. November 30, 1992.

North Dakota

EPA SLN No. ND 92 0002. Ciba-Geigy Corp. Registration is for Metalaxyl + Mancozeb to be used on potatoes to control blight and tuber and pink rot. September 15, 1992.

New York

EPA SLN No. NY 92 0003. Roussel UCLAF Corp. Registration is for Resmethrin to be used in residential areas and swamps to control mosquitoes. September 1, 1992.

Oregon

EPA SLN No. OR 92 0005. Elf Atochem N.A., Inc. Registration is for Sulfur to be used on apples and pears to control powdery mildew, fungus-scab, and pear psylla. September 4, 1992.

EPA SLN No. OR 92 0008. Gowan Co. Registration is for Phosmet to be used on blueberries to control leafrollers and blueberry maggots. September 10, 1992.

EPA SLN No. OR 92 0009. Miles, Inc. Registration is for Metasystox-R S.C. to be used on apples to control aphids. September 9, 1992.

EPA SLN No. OR 92 0011. Gowan Co. Registration is for Methyl Parathion to

be used on canola/rapeseed to control cabbage aphid and fleabeetles. September 14, 1992.

EPA SLN No. OR 92 0012. Wilbur Ellis Co. Registration is for Methyl Parathion to be used on rapeseed/canola to control cabbage aphids and leaf beetles. October 21, 1992.

EPA SLN No. OR 92 0013. E. I. du Pont DeNemours and Co., Inc. Registration is for Metsulfuron Methyl to be used in pastures and on rangeland to control weeds. October 26, 1992.

EPA SLN No. OR 92 0014. FMC Corp. Registration is for Carbofuran to be used on sugarbeets to control sugarbeet rot and maggots. October 23, 1992.

South Carolina

EPA SLN No. SC 92 0006. Ciba-Geigy Corp. Registration is for Profenofos to be used on cotton to control insects and mites. September 11, 1992.

EPA SLN No. SC 92 0007. ICI Americas, Inc. Registration is for Ro-Neet 6-E to be used on spinach to control nutsledge, annual grasses, and broadleaf weeds. November 20, 1992.

Texas

EPA SLN No. TX 92 0025. E. I. du Pont DeNemours & Co., Inc. Registration is for Benomyl to be used on turnip greens to control leaf spots and powdery mildew. November 24, 1992.

Virginia

EPA SLN No. VA 93 0001. FMC Corp. Registration is for Carbofuran to be used on cucurbits to control cucumber beetles. November 24, 1992.

Washington

EPA SLN No. WA 92 0037. Wilbur Ellis Co. Registration is for Busan 1020 to be used in fruit orchards to control replant diseases. October 14, 1992.

EPA SLN No. WA 92 0038. Buckman Labs, Inc. Registration is for Busan 1020 to be used in fruit orchards to control replant diseases. October 14, 1992.

Wyoming

EPA SLN No. WY 92 0006. Sandoz Agro, Inc. Registration is for Dicamba to be used on millet to control weeds. November 20, 1992.

Authority: Sec. 24, as amended, 92 Stat. 835 (7 U.S.C. 136).

Dated: February 23, 1993.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-4889 Filed 3-2-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4600-6]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; In re M.T. Richards, Inc.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: Notice of *de minimis* settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the removal action at the M.T. Richards Superfund Site, Village of Crossville, White County, Illinois. The agreement was proposed by EPA Region V on February 12, 1993. EPA Region V has submitted the proposed agreement to the U.S. Department of Justice for review concurrent with this request for public comment. As of the date of publication, U.S. EPA has not received Department of Justice approval for the proposed agreement.

DATES: Comments must be provided on or before April 2, 1993.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and should refer to: In Re M.T. Richards Superfund Site in Crossville, Illinois, U.S. EPA Docket No. V-W-93-C-182.

FOR FURTHER INFORMATION CONTACT: Barbara Wester, U.S. Environmental Protection Agency, Office of Regional Counsel, 77 W. Jackson Blvd., Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: Below are listed the parties who have executed binding certifications of their consent to participate in the settlement:

List of Settlors

Abner Trucking Company; Absher Chevrolet, Inc.; Absher Oil Company; Ashland Petroleum Company; Buttes Oil & Gas Company; Cliff Jones Trucking; Eddie Dillon; Farrar Oil Company; Farrar Drilling Company; Grayville Casing Pulling and Supply Co., Inc.; Gwaltney Drilling Company; H&H Oil Company; Jarvis Brothers & Marcell, Inc.; Major Oil Company; Oil Field Research, Inc.; Royalco, Inc.; Royal Oil & Gas Corporation; Ellis Shepherd; Southern Triangle Oil Company; Tamarack Petroleum Company; Texas Eastern Products, Inc.; J.D. Turner; Village of Crossville; Lloyd W. Abbott; Ashland Exploration Inc.; Ashland Oil & Refining Co.; Ashland Pipeline Co.; Bell Brothers; Collins Bros. Oil Co.; Conoco, Inc.; Bill Conyers; Conyers Well Service; Neil R. Etson; Perry Fulk; V.R. Gallagher; Don Gordon; Gulf Oil Corp.; Halliburton Co.; H & H Oil Co.; G.L. Kelly; Kendall Drilling Co.; Kewanee Oil Co.; Kirby Petroleum Co.; Kirk Drilling Co.; Paul S. Knight; Mabee Petroleum Co.; Mac Oil Co.; Marathon Oil Co.; Mobile Oil Corp.; Kenneth E. Musgrove/Musgrove Oil Co.; Murvin Oil Co.; Murvin & Steber; National Supply Co.; Penn Central Corp.; Phillips Petroleum Co.; Richard W. Portis; Reed's Texaco; James L. Schaefer; Schaefer Oil Co.; Shulman Bros., Inc.; Skelly Oil Co.; Jack Small; Sun Co.; Sun Pipeline Co.; Superior Oil Co.; Tartan Oil Co.; T.W. George Trust; West Drilling Co.; William R. Rowe Tank Truck Service; Country Mark Cooperative, Inc., Yingling Oil, Inc.

These parties will pay $1.60 per gallon, with a minimum payment of $500.00, in settlement payments for removal costs under the agreement, subject to the contingency that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice. One hundred percent of this amount will reimburse EPA for its past costs at the M.T. Richards, Inc. Superfund Site.

EPA is entering into this agreement under the authority of section 122(g) and 107 of CERCLA. Section 122(g) authorizes settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with parties for the reimbursement of past costs at the M.T. Richards, Inc. Superfund Site who are responsible for less than 0.0629 percent of the total volume of waste sent to the site between 1947 and 1982. The proposed settlement reflects, and was agreed to based on, conditions as known to the parties as of February 12, 1993. Settling Parties will be required to pay their volumetric share of the Government's past costs at the Site. Settling parties will also be required to pay a settlement premium of 1.0 (i.e., a 2.0 multiplier) to cover the risk of underestimating response costs and of not recovering 100 percent of the Agency's outstanding costs from parties not eligible for or not joining the *de minimis* settlement. In exchange, Settling Parties will receive a complete release from further civil or administrative liabilities for the removal costs expended at the Site. The settlement makes certain allowances for those parties with an inability to pay

defense. The affected parties are: William R. Rowe; Kenneth Musgrove.

The Environmental Protection Agency will receive written comments relating to this agreement for thirty days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement or additional background information relating to the settlement is available for review and may be obtained in person or by mail from Barbara L. Wester, Office of the Regional Counsel, U.S. Environmental Protection Agency, Region V, 77 W. Jackson, Mail Code CS-3T, Chicago, Illinois 60604.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601-9675.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93-4931 Filed 3-2-93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Uniform Application/Uniform Termination for Municipal Securities Principal or Representative.

Form Number: MSD-4/MSD-5.

OMB Number: 3064-0022.

Expiration Date of OMB Clearance: May 31, 1993.

Respondents: Insured state nonmember banks.

Frequency of Response: On occasion.

Number of Respondents: 114.

Number of Responses Per Respondent: 1.

Total Annual Responses: 114.

Average Number of Hours per Response: 1.

Total Annual Burden Hours: 114.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project 3064-0022, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before May 3, 1993.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: An insured state nonmember bank which is a municipal securities dealer must file Form MSD-4 with the FDIC to permit an employee to be associated with it as a municipal securities principal or representative, and MSD-5 to notify the FDIC that an employee is no longer a municipal securities principal or representative. FDIC uses the forms to ensure compliance with the professional requirements for municipal securities dealers in accordance with the rules of the Municipal Securities Rulemaking Board.

Dated: February 25, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-4831 Filed 3-2-93; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Notification of Performance of Bank Services.

Form Number: FDIC 6120/06.

OMB Number: 3064-0029.

Expiration Date of OMB Clearance: May 31, 1993.

Respondents: Insured state nonmember banks.

Frequency of Response: On occasion.

Number of Respondents: 175.

Number of Responses per Respondent: 1.

Total Annual Responses: 175.

Average Number of Hours per Response: 0.5.

Total Annual Burden Hours: 87.5.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project 3064-0029, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before May 3, 1993.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Form FDIC 6120/06 is used by insured state nonmember banks to notify the FDIC of the existence of a relationship with a bank service corporation as required by section 7 of the Bank Service Corporation Act (12 U.S.C. 1867).

Dated: February 25, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-4830 Filed 3-2-93; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Nippon Yusen Kaisha, 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, 800 North Capitol Street, NW., 9th Floor. 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 § 472.603 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.: 217–011404.

Title: Nippon Yusen Kaisha and Mitsui, O.S.K. Lines, Ltd. Slot Charter, Agreement in the U.S. Far East-U.S., Atlantic Coast.

Parties:

Nippon Yusen Kaisha ("NYK"), Mitsui O.S.K. Lines, Ltd. ("MOL").

Synopsis: The proposed Agreement authorizes NYK to charter space to MOL from the space allocated to it on vessels operated under Agreement No. 203–011398 (Nippon Yusen Kaisha, Hapag Lloyd, A.G. and Neptune Orient Lines, Ltd. Far East/United States/North Europe Space Charter and Sailing Agreement) in the trade between ports in the Far East and ports and points on the U.S. Atlantic Coast. The parties have requested a shortened review period.

Agreement No.: 224–200746.

Title: Port Authority of New York and New Jersey/Zim American Israeli Shipping Co. Inc., Container Incentive Agreement.

Parties:

Port Authority of New York and New Jersey ("Port Authority"), Zim American Israeli Shipping Co. Inc. ("Zim").

Synopsis: The subject Agreement permits the Port Authority to make incentive payments to Zim of $20 per import and $40 per export container loaded with cargo that transits the Port and is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200747.

Title: The Port Authority of New York & New Jersey/Hapag-Lloyd (America) Inc. Container Incentive Agreement.

Parties:

The Port Authority of New York and New Jersey ("Port Authority"), Hapag-Lloyd (America) Inc. ("Hapag").

Synopsis: The Agreement provides for the Port Authority to make payments to Hapag in the amount of $20/import and $40/export for containerized cargo loaded or unloaded at the Port Authority. In addition each container must have been shipped by rail to or from points more than 260 miles from the port and be subject to a rail freight bill or waybill issued on or after January 1, 1993. The Agreement will terminate on December 1, 1993.

Agreement No.: 224–200749.

Title: Port Authority of New York and New Jersey/Ivaran Agencies Inc. Container Incentive Agreement.

Parties:

Port Authority of New York and New Jersey ("Port Authority"), Ivaran Agencies, Inc. ("Ivaran").

Synopsis: The subject Agreement permits the Port Authority to make incentive payments to Ivaran of $20 per import and $40 per export container loaded with cargo that transits the Port and is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200750.

Title: The Port Authority of New York & New Jersey/Lykes Brothers Shipping Co. Container Incentive Agreement.

Parties:

The Port Authority of New York and New Jersey ("Port Authority"), Lykes Brothers Shipping Co. ("Lykes").

Synopsis: The Agreement provides for the Port Authority to make payments to Lykes in the amount of $20/import and $40/export for containerized cargo loaded or unloaded at the Port Authority. In addition each container must have been shipped by rail to or from points more than 260 miles from the port and be subject to a rail freight bill or waybill issued on or after January 1, 1993. The Agreement will terminate on December 1, 1993.

Dated: February 25, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–4814 Filed 3–2–93; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Discovery Cruise Line Partnership, Discovery Cruises, Inc. and Discovery Sea Tours, Inc., 1850 Eller Drive, Ft. Lauderdale, Florida 33316.

Vessel: Discovery I.

Dated: February 25, 1993.

Joseph C. Polking.,

Secretary.

[FR Doc. 93–4802 Filed 3–2–93; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Discovery Cruise Line Partnership, Discovery Cruises, Inc. and Discovery Sea Tours, Inc., 1850 Eller Drive, Ft. Lauderdale, Florida 33316.

Vessel: Discovery I.

Dated: February 25, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–4802 Filed 3–2–93; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

Proposed Border Station, Located East of Calexico, CA, Notice of Availability for a Draft Environmental Impact Statement

The General Services Administration (GSA) hereby gives notice that a Draft Environmental Impact Statement (DEIS) has been prepared in accordance with the National Environmental Policy Act (NEPA) for a proposed new port of entry to be located approximately six miles east of the city of Calexico, California. The DEIS is being made available February 26, 1993. GSA is the lead federal agency for the preparation of the EIS. The DEIS evaluates the proposed project, the no-action alternative, and expansion of the existing port of entry in Calexico.

Written comments on the alternatives, impacts and mitigation measures should be sent no later than April 14, 1993 to the GSA's EIS contractor, Environmental Science Associates, Inc. at 4221 Wilshire Boulevard, suite 480, Los Angeles, CA 90010–3512. Comments will also be accepted at a public meeting to be held on March 25, 1993, at the El Centro Community Center, 375 South First Street, El Centro, California 92243. The meeting will be held in two sessions: One starting at 2:30 p.m., and another starting at 7 p.m. At these sessions, representatives of GSA, the California Department of Transportation, and Environmental

Science Associates will receive comments from interested parties regarding the proposed project, the environmental analysis and proposed mitigation measures. All comments received will be made a part of the administrative record for the DEIS and will be evaluated as part of the Final EIS review process.

For further information contact Mr. Alan Campbell, General Services Administration, Public Buildings Service, Planning Staff (9PL), 525 Market Street, San Francisco, California 94105. Telephone number (415) 744–5252.

Dated: February 22, 1993.

Wolfgang J. Zoellner,

Acting Regional Administrator (9A).

[FR Doc. 93–4829 Filed 3–2–93; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Workshop To Assist in Developing a Standardized Test Battery for Birth Defects and Reproductive Disorders for Use in Environmental Health Field Studies; Meeting

The Agency for Toxic Substances and Disease Registry (ATSDR), in association with the University of Cincinnati, announces the following meeting.

Name: Workshop to Assist in Developing a Standardized Test Battery for Birth Defects and Reproductive Disorders for Use in Environmental Health Field Studies.

Time and Dates: 8 a.m.–6 p.m., May 17–18, 1993.

Place: Days Hotel at Lenox, 3377 Peachtree Road, NE., Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This workshop will assist ATSDR in the selection of standardized testing and evaluation methods for investigating the association between reproductive and developmental disorders in humans and exposure to hazardous substances in the environment.

Matters to be Considered: Participants will be divided into the following three workgroups:

Workgroup 1: Female Reproductive Disorders
Workgroup 2: Male Reproductive Disorders
Workgroup 3: Developmental Disorders and Birth Defects

Each workgroup will discuss three major topics:

(1) Development of testing and evaluation methods for immediate use in environmental health studies.

(2) Identification of significant information needs in the implementation of these evaluation methods and criteria for the interpretation and continuous modification and updating/of the standard methods.

(3) Development of criteria for classification of birth defects and reproductive disorders.

Contact Person for More Information: Joyce Smith, Division of Health Studies, ATSDR (MS E31), 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639–6200.

Dated: February 24, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 93–4863 Filed 3–2–93; 8:45 am]

BILLING CODE 4160–70–M

Food and Drug Administration

[Docket No. 93N–0077]

Heather Drug Co., et al.; Withdrawal of Approval of 25 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 25 abbreviated new drug applications (ANDA's). The holders of the ANDA'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: April 2, 1993.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8038.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA no.	Drug	Applicant
80–189	Sulfisoxazole Tablets, USP, 500 milligrams (mg)	Heather Drug Co., c/o Lachman Consultant Services, Inc., 1600 Stewart Ave., Westbury, NY 11590.
80–841	Dimenhydrinate Tablets, 50 mg	Do.
83–953	Diphenhydramine Hydrochloride Capsules, USP, 50 mg	Do.
84–046	Meclizine Hydrochloride Tablets, USP, 25 mg	Richlyn Laboratories, Inc., Castor and Kensington Avenues, Philadelphia, PA 19124.
84–258	Meclizine Hydrochloride Tablets, USP, 12.5 mg	Do.
84–329	Meprobamate Tablets, 600 mg	Heather Drug Co.
84–341	Prednisone Tablets, USP, 10 mg	Do.
84–524	Diphenhydramine Hydrochloride Capsules, USP, 25 mg	Do.
84–675	Methocarbamol Tablets, 500 mg	Do.
84–924	Methocarbamol Tablets, 750 mg	Do.
85–400	Succinylcholine Chloride Sterile Solution, 5 milliliters (mL), 100 mg	International Medication Systems, Limited, 1886 Santa Anita Ave., South El Monte, CA 91733.
85–543	Prednisone Tablets, USP, 20 mg	Heather Drug Co.
85–736	Cortisone Acetate Tablets, USP, 25 mg	Do.
85–780	Propantheline Bromide Tablets, 15 mg	Do.
86–798	Diphenoxylate Hydrochloride with Atropine Tablets, 2.5/0.025 mg	Do.
86–946	Prednisone Tablets, USP, 50 mg	Do.
87–307	Sulfamethoxazole Tablets, 500 mg	Shionogi USA, Inc., 3848 Carson St., suite 206, Torrance, CA 90503.
87–452	Heparin Sodium Injection, USP, 1,000 units/mL	Luitpold Pharmaceuticals, Inc., One Luitpold Dr., Shirley, NY 11967.

ANDA no.	Drug	Applicant
87-693	Ergomar Sublingual Tablets (ergotamine tartrate tablets, USP), 2 mg	Fisons Corp., P.O. Box 1710, Rochester, NY 14603.
88-453	Sodium Polystyrene Sulfonate Suspension, USP	Roxane Laboratories, Inc., P.O. Box 16532, Columbus, OH 43216-6532.
88-470	Isoetharine Inhalation Solution, USP, 0.167%	Astra Pharmaceutical Products, Inc., 50 Otis St., Westborough, MA 01581-4500.
88-471	Isoetharine Inhalation Solution, USP, 0.2%	Do.
88-472	Isoetharine Inhalation Solution, USP, 0.25%	Do.
89-052	Chlorthalidone Tablets, USP, 50 mg	Pharmaceutical Basics, Inc., 301 South Cherokee St., Denver, CO 80223.
89-063	Heparin Lock Flush Solution, 10 USP units/mL	Lultpold Pharmaceuticals, Inc.

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 ANDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective April 2, 1993.

Dated: February 18, 1993.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 93-4792 Filed 3-2-93; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Final Funding Preference and Priority for Cooperative Agreements for Area Health Education Centers Program for Fiscal Year 1993

The Health Resources and Services Administration (HRSA) announces the final funding preference and priority for Cooperative Agreements for Area Health Education Centers authorized under section 746(a)(1) (previously section 781(a)(1) of the Public Health Service (PHS) Act), as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102-408, dated October 13, 1992.

Purpose

Section 746(a)(1) of the PHS Act authorizes Federal assistance to schools of medicine and osteopathic medicine which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs.

Approximately $18.7 million will be available in FY 1993 for this program. Total continuation support recommended is $9.7 million. It is anticipated that $9.0 million will be available to support eight competing awards averaging $1.1 million each.

The Health Professions Education Extension Amendments of 1992, Public Law 102-408, Dated October 13, 1992

Since this program was announced on October 5, 1992, Pub. L. 102-408 was passed by the Congress and signed by the President. This legislation resulted in the following changes for the AHEC Program:

(1) Period of Support

The maximum period during which the AHEC *program* may receive payments shall be 12 years, subject to annual approval by the Secretary and the availability of appropriated funds. The maximum period during which an AHEC *center* developed by a program may receive payments shall be 6 years. The provision for a 12-year maximum shall not be construed as establishing a limitation on the number of awards under this authority that may be made to the school involved.

(2) General Requirements

As provided in section 746(b), a medical or osteopathic medical school may not receive an award for operational expenses under the existing basic AHEC award authority unless the program:

(a) maintains preceptorship educational experiences for health science students;

(b) maintains community-based primary care residency programs or is affiliated with such programs;

(c) maintains continuing education programs for health professionals or coordinates with such programs;

(d) maintains learning resource and dissemination systems for information identification and retrieval;

(e) has agreements with community-based organizations for the delivery of education and training in the health professions;

(f) is involved in the training of health professionals (including nurses and allied health professionals), except to the extent inconsistent with the law of the State in which the training is conducted; and

(g) carries out recruitment programs for the health science professions, or programs for health-career awareness, among minority and other elementary or secondary students from areas the program has determined to be medically underserved.

(3) Requirement for Participation of Other Health Professions Schools or Programs

The former requirement that participating medical schools provide for the active participation of at least 2 schools or programs of other health professions (including a school of dentistry if there is one affiliated with the medical school's university) is modified to require also participation of a graduate program of mental health practice if there is one affiliated with the university.

(4) Requirement for Expenditure of at Least 75 Percent of Award in Centers

The former requirement that at least 75 percent of the total funds provided to a school under any AHEC program authority (basic AHEC programs, AHEC Special Initiatives, or model AHEC programs) be expended by the AHEC program in AHEC centers has been amended, as provided in section 746(e)(1)(A) to require also that the school enter into an agreement with each of such centers for purposes of specifying the allocation of the 75 percent of funds.

(5) Alternative Matching Requirements for New AHEC Programs Developed Under Basic AHEC Authority

As provided in section 746(e)(2), for an AHEC center developed as part of an AHEC program first funded under the basic AHEC authority on or after the date of enactment of this Act, the existing requirement that not more than 75 percent of total operating funds be provided by the Federal Government is amended to establish a ceiling of 55 percent of any fifth or sixth year of the development or operation of the center.

Established Funding Preference for Fiscal Year 1993

In making awards for fiscal year 1993, a funding preference will be given to approved competing continuation applications under section 746(a)(1).

Established Funding Priorities for Fiscal Year 1993

A funding priority will be given to the following:

1. Applications which demonstrate substantial clinical training (a student or resident clerkship or preceptorship of 4 to 8 weeks) in one or more PHS Act, section 332 Health Professional Shortage Area(s) and/or PHS Act, section 329 Migrant Health Center, a PHS Act, section 330 Community Health Center, or a State designated clinic/center serving an underserved population. Section 332 establishes criteria to designate geographic areas, population groups, medical facilities, and other public facilities in the States as Health Professional Shortage Areas. Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers. Section 330 authorizes support for community health care services to medically underserved populations.

2. Applications proposing centers that will serve Health Professional Shortage Areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks and/or Hispanics than exists in the general population in the United States.

Final Funding Preference and Funding Priority for Fiscal Year 1993

An additional proposed funding preference and priority were announced in the **Federal Register** on October 5, 1992 at 57 FR 45815. No comments were received during the 30-day comment period. Therefore, the proposed funding preference and priority will be retained as follows:

Funding Preference

A funding preference will be given to approved competing new applications under section 746(a)(1) which propose to plan, develop and implement an AHEC program in a State where there is no existing AHEC program. These approved applications will be funded after approved competing continuation applications.

Funding Priority

A funding priority will be given to applications which demonstrate the development or implementation of information dissemination systems with the capability to provide state-of-the-art information on clinical modalities, protocols, and other guidelines which can address emerging health issues such as substance abuse, clinical preventive services, infant mortality and geriatrics for primary care practitioners, including National Health Service Corps personnel.

Additional Information

If additional programmatic information is needed, please contact: Ms. Cherry Tsutsumida, Chief, AHEC and Special Programs Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 4C–05, Rockville, Maryland 20857, Telephone: (301) 443–6817. FAX (301) 443–8890.

This program is listed at 93.824 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: February 25, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–4791 Filed 3–2–93; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health (NIH)

National Institute on Aging; Notice of Meeting of the Task Force on Aging Research

Pursuant to Public Law 92–463, notice is hereby given that the Task Force on Aging Research will meet on March 23, 1993, from 9 to 11 a.m. in Conference Room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The entire meeting will be open to the public. The Task Force will meet to approve the interim report of the Task Force and decide how to prioritize the recommendations that by then will have been developed by the members. Attendance by the public will be limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ronald P. Abeles, Ph.D., Executive Secretary, Task Force on Aging Research, the Gateway Building, 7201 Wisconsin Avenue, suite 2C–234, Bethesda, Maryland 20892, at (301) 496–3136, in advance of the meeting. Dr. Abeles will also provide substantive information on the meeting, a roster of the committee members and a summary of the meeting upon request.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: February 24, 1993.

Suan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–4795 Filed 3–2–93; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Division of Workplace Programs, Room 9–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-

month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

AccuTox Analytical Laboratories, 427 Fifth Avenue NW., P.O. Box 770, Attalla, AL 35954–0770, 205–538–0012/800–247–3893

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900

California Toxicology Services, 1925 East Dakota Avenue, Suite 206, Fresno, CA 93726, 209–221–5655/800–448–7600

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, 800–338–0166 (outside OH)/800–362–8913 (inside OH) (name changed: formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800–638–1100 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)

Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugScan, Inc., P.O. Box 2969 , 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

Eagle Forensic Laboratory, Inc., 950 North Federal Highway, Suite 308, Pompano Beach, FL 33062, 305–946–4324

ElSohly Laboratories, Inc., 1215½ Jackson Ave., Oxford, MS 38655, 601–236–2609

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (name change: formerly Alpha Medical Laboratory, Inc.)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harrison & Associates Forensic Laboratories, 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800–725–3784/915–687–6877

HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–328–4142 (inside MI)/800–225–9414 (outside MI)

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713–793–6080

IHC Laboratory Services Forensic Toxicology, 930 North 500 West, Suite E, Provo, UT 84604, 800–967–9766

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, Ohio 45229, 513–569–2051

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507–284–3631

Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 9176 Independence Avenue, Chatsworth, CA 91311, 818–718–0115/800–331–8670 (outside CA)/800–464–7081 (inside CA) (name changed: formerly Laboratory Specialists, Inc.; Abused Drug Laboratories)

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 2356 North Lincoln Avenue, Chicago, IL 60614, 312–880–6900 (name changed: formerly Bio-Analytical Technologies)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (name changed: formerly Maryland Medical Laboratory, Inc.)

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (name changed: formerly Med Arts Lab)

National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, 919–760–4620/800–334–8627 (outside NC)/800–642–0894 (inside NC)

National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100/800–572–3734 (inside VA)/800–336–0391 (outside VA)
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (name changed: formerly Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134
Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708–480–4680
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Precision), 5 Industrial Park Drive, Oxford, MS 38655, 601–236–5600/800–237–7352
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294 (Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory Toxicology Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 512–493–3211
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400
Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803–233–5639
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–4170
Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404–939–4811
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (name changed: formerly International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (name changed: formerly SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260

The following laboratory has voluntarily withdrawn from the National Laboratory Certification Program, effective February 11, 1993: Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516–625–9800

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–4899 Filed 3–2–93; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–060–03–4410–03]

Proposed Amendment for the Henry Mountain Resource Area Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The proposed planning amendment for the Henry Mountain Resource Area (HMRA) Management Framework Plan (MFP) and associated Environmental Assessment (EA) to allow for the change in allocation of forage between wildlife and livestock is available. The Utah Division of Wildlife Resources has evaluated the need for additional buffalo (Bison bison) in the HMRA and has assisted the Bureau of Land Management (BLM) in preparing an Environmental Assessment addressing the forage allocations in the Pennell, Steel Butte, and Nasty Flat allotments. This area is within the area which has been nominated for the Buffalo Habitat Area of Critical Environmental Concern. The following Wilderness Study Areas (WSA) are involved: Mount Ellen-Blue Hills WSA, Bull Mountain WSA, and Mount Pennell WSA. Changes would be within the guidelines of the Interim Management Policy and would not impair or prevent areas from being eligible for wilderness designation.

This amendment will increase the allocation of forage to buffalo and reduce the allocation of forage to livestock on the Pennell, Steel Butte, and Nasty Flat allotments.

This amendment would also provide for the adjustment in forage allocations between allotments throughout the HMRA between livestock and wildlife as determined to be needed by monitoring and analysis.

DATES: The protest period for this proposed plan amendment will commence with the date of publication of this notice. Protests must be submitted on or before April 2, 1993.

FOR FURTHER INFORMATION CONTACT: Alan Partridge, Bureau of Land Management, Richfield District Office, 900 North 150 East, Richfield, Utah 84701.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR part 1610. The planning amendment is subject to protest from any adversely affected party who participated in the planning process. Protest must be made in accordance with the provisions of 43 CFR 1610.5–2. Protests must be received by the Director of the BLM, MS 5660, 1849 C Street, NW., Washington, DC 20240, within 30 days after the date of publication of this Notice of Availability for the proposed planning amendment.

James M. Parker,

State Director.

[FR Doc. 93–4849 Filed 3–2–93; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–020–03–4333–02]

Notice of Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is to advise the public that the Bureau of Land Management (BLM), Salt Lake District, proposes to amend the Pony Express Resource Management Plan (RMP) and complete associated environmental assessments (EA). Necessary amendment to the approved plan will keep the document current and viable. This notice is intended to inform the public of the planning effort and to invite public participation in the identification of the planning process.

FOR FURTHER INFORMATION CONTACT: Howard Hedrick, Pony Express Resource Area Manager, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, or telephone (801) 977–4300.

SUPPLEMENTARY INFORMATION: The amended Pony Express RMP will be prepared under 43 CFR part 1610 to meet the requirements of section 202 of the Federal Land Policy and Management Act of 1976. Decisions generated during this planning process will supersede the decisions in the 1990 Pony Express RMP.

The Pony Express Resource Area encompasses the Salt Lake, Tooele, and Utah Counties in the northwest corner of Utah. Additionally, the Pony Express Resource Area manages mineral interests on other public lands.

Two amendments and associated EAs will be prepared. The first will address the following issues: Withdrawals and transportation corridors, recreation and visual resource management, wildlife habitat management areas, and cultural resource management. The second will address proposed changes to the area's wild horse range designations.

Public participation is being sought at this initial stage in the planning process to ensure the RMP amendments address all issues, problems, and concerns from those interested in the management of lands within the Pony Express Resource Area. Public meetings will be announced at a later date in local newspapers. The comment period for this notice will commence with the date of publication of this notice. Comments must be submitted on or before April 2, 1993.

G. William Lamb,

Acting State Director.

[FR Doc. 93–4848 Filed 3–2–93; 8:45 am]

BILLING CODE 4310–DQ–M

[CA–060–4410–03]

South Coast Proposed Resource Management Plan and Final Environmental Impact Statement, Southern California

AGENCY: Bureau of Land Management, Palm Springs-South Coast Resource Area, California Desert District.

ACTION: Notice of availability.

SUMMARY: A Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) has been prepared for the South Coast Planning Area (FES No. 93–5). The PRMP/FEIS describes and analyzes alternatives for future management of approximately 296,000 acres of public land located in portions of the California Counties of San Diego, Riverside, Los Angeles, San Bernardino and Orange; these public lands include 167,000 acres of split estate lands where there are federally-owned minerals but the land surface is privately owned. Copies of the PRMP/FEIS may be obtained from the Palm Springs-South Coast Resource Area, 63–500 Garnet Avenue, P.O. Box 2000, North Palm Springs, CA 92258, phone (619) 251–0812. Copies will be available for reading at several public libraries within the five county planning area and at the following additional BLM locations:

Office of Public Affairs, Main Interior Bldg., room 5600, 18th and C Street NW., Washington, DC 20240

California State Office, 2800 Cottage Way, room E–2845, Sacramento, CA 95825

California Desert District Office, 6221 Box Springs Boulevard, Riverside, CA 92507

SUPPLEMENTARY INFORMATION: The PRMP/FEIS describes and analyzes the proposed action to resolve the following issues: (1) Land Ownership and Use Authorizations, (2) Threatened, Endangered and Other Sensitive, (3) Open Space, (4) Recreation and Public Access, and (5) Oil and Gas Leasing and Sand and Gravel Development.

The PRMP/FEIS proposes seven Areas of Critical Environmental Concern (ACEC's). The PRMP would designate:

The Cedar Canyon ACEC (705 acres) for preservation of populations of Mexican flannelbush. Cedar Canyon is near Otay Mountain in San Diego County. The ACEC would be a right-of-way avoidance area, not available for mineral material sales or livestock grazing and closed to motorized vehicle use. Acquisition of 280 acres for addition to the ACEC would be pursued.

Lands surrounding Tecate Peak (355 acres) and Little Tecate Peak (269 acres) as the Kuchamaa ACEC for the protection of Native American religious heritage. The ACEC would be a right-of-way avoidance area, not available for mineral material sales or livestock grazing. Motorized vehicle use within the ACEC would be limited. The feasibility of relocating or removing the existing communication site facilities on Tecate Peak would be explored. Acquisition of approximately 500 acres for addition to the ACEC would be pursued.

Potrero ACEC (1,030 acres) in Riverside County for preservation of Stephens' kangaroo rat habitat. The ACEC would be a right-of-way avoidance area and unavailable for mineral material sales. Withdrawal of the ACEC from mineral leasing and entry under the 1872 mining law would be pursued. Acquisition of approximately 12,00 acres for addition to the ACEC would be pursued.

The Santa Ana River Wash ACEC, totalling of 760 acres, for protection of Santa Ana River woolly-star and slender-horned spineflower. The ACEC would be a right-of-way avoidance area, unavailable for mineral material sales, closed to motorized vehicle use and unavailable for livestock grazing.

Public land (1,260) acres within the Santa Margarita Ecological Reserve as the Santa Margarita Reserve ACEC for

protection for sensitive species and natural values. The ACEC would be a right-of-way avoidance area, unavailable for mineral material sales and livestock grazing. Withdrawal of the ACEC from mineral leasing and entry under the 1872 mining law would be pursued. A portion of the ACEC, 360 acres, would be closed to motorized vehicle use. Acquisition of 300 acres for addition to the ACEC would be pursued.

The Million Dollar Spring ACEC, approximately 5,830 acres of public lands within the eastern part of the Beauty Mountain Wilderness Study Area, for the protection of watershed and sensitive natural values. The ACEC would be a right-of-way avoidance area and not available for material sales. Acquisition of 510 acres for addition to the ACEC would be pursued.

The Johnson Canyon ACEC, approximately 1,710 acres including 1,150 acres currently leased to the San Diego State University Systems Ecology Group, for the protection of unique vegetation resources. The ACEC would not be available for mineral material sales or livestock grazing and would be a right-of-way avoidance area. Acquisition of 2,100 acres for addition to the ACEC would be pursued.

The RMP contains a determination of eligibility for three segments of the Santa Margarita River as a potential unit of the national Wild and Scenic River System. The 1.15 miles under BLM management meet the classification of "wild river". Interim protective measures are identified in the RMP.

DATES: Written protests on the proposed decisions may be filed with the District Manager at the address below on or before April 2, 1993.

FOR COMMENTS AND FURTHER INFORMATION CONTACT: Russell Kaldenberg, Area Manager, Palm Springs-South Coast Resource Area; P.O. Box 2000, North Palm Springs, CA 92258; phone (619) 251–0812.

Dated: February 24, 1993.

Russell L. Kaldenberg,

Area Manager.

[FR Doc. 93–4899 Filed 3–2–93; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–775799

Applicant: Louis Meissner, Kennewick, WA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) to be culled from the captive herd maintained by Mr. F.W.M. Bowker, "Thornkoff", Grahamstown, Cape Province, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–775793

Applicant: Helen Keim, Wheaton, IL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. Theo Erasmus, "Mariendal", Kroostad, Orange Free State, for the purpose of enhancement of survival of the species.

PRT–775792

Applicant: Joseph Keim, Wheaton, IL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. Theo Erasmus, "Mariendal", Kroostad, Orange Free State, for the purpose of enhancement of survival of the species.

PRT–775788

Applicant: Jeffrey Keim, Wheaton, IL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. Theo Erasmus, "Mariendal", Kroostad, Orange Free State, for the purpose of enhancement of survival of the species.

PRT–776066

Applicant: St. Louis Zoological Park, St. Louis, MO.

The applicant requests a permit to import two captive-hatched Bali mynahs (*Leucospar rothschildi*) from the Jurong Birdpark, Singapore, for enhancement of propagation and survival of the species.

PRT–774891

Applicant: Brian Bowen, University of Florida, Gainesville, FL.

The applicant requests a permit to import from worldwide sources eggs, hatchlings, and blood and tissue samples, including DNA aliquots, of the following species of sea turtles for scientific research: *Chelonia mydas* (green), *Caretta caretta* (loggerhead), *Dermochelys coriacea* (leatherback), *Lepidochelys olivacea* (olive ridley) and *Eretmochelys imbricata* (hawksbill).

PRT–766018

Applicant: Franklin Gress, Davis, CA.

The applicant requests a permit to collect brown pelican (*Pelecanus occidentalis*) eggs from nests on Anacapa Island, Channel Islands National Park, California, for scientific research. An unspecified number of eggs may be collected in future years.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (1–800/358–2104); FAX: (703/358–2281).

Dated: February 26, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–4880 Filed 3–2–93; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Rio Grande American Canal Extension Project, El Paso, TX; Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission.

ACTION: Notice of finding of no significant impact.

SUMMARY: Based on an environmental assessment, the U.S. Section finds that the proposed action of an extension to be constructed to the existing American Canal is not a major Federal action that would have a significant adverse affect on the quality of the human environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083–44094); the U.S. Section hereby gives

notice that an environmental impact statement will not be prepared for the proposed project.

ADDRESSES: Dr. Conrad G. Keyes, Jr., Principal Engineer, Planning; U.S. Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, Building C-310, El Paso, Texas 79902-1422. Telephone: 915/534-6703.

SUPPLEMENTARY INFORMATION:

Proposed Action

The proposed Rio Grande American Canal Extension (RGACE) involves the rehabilitation and enlargement of segments of the existing Franklin Canal; the construction of a new, reinforced concrete-lined canal; and other associated works. The United States Section (U.S. Section) of the International Boundary and Water Commission, United States and Mexico (Commission) is authorized under the Rio Grande American Canal Extension Act of 1990 (the Act of 1990), Pubic Law 101-438, dated October 15, 1990, to construct, operate, and maintain an extension of the existing American Canal in El Paso, Texas. As stated in section 2(6) of the Act of 1990, "(t)he construction and operation of an extension of the American Canal which would lie wholly in the United States would provide for a more equitable distribution of waters between the United States and Mexico, reduce water losses, and minimize many hazards to public safety." The canal extension and associated facilities would be located adjacent to the Rio Grande Rectification Flood Control Project within the City of El Paso, El Paso County, Texas.

Water for domestic and irrigation use is diverted into the American Canal at the American Dam located on the Rio Grande upstream from downtown El Paso. The diversion dam and canal were constructed completely within United States territory to divert United States waters away from the Rio Grande and to permit the discharge into the international reach of the Rio Grande only those waters assigned to the Republic of Mexico under the Convention of 1906. This ensures that United States waters diverted at the American Dam are completely retained within the United States to a point downstream of the location where the United States delivers the 1906 Convention waters near International Dam. Depending on the schedule submitted by Mexico, up to 8.5 cubic meters per second (cms) or 300 cubic feet per second (cfs) of water is released into the Rio Grande channel downstream from American Dam for delivery to the Republic of Mexico in the bed of the river near the head works of the Acequia Madre, Mexico's principal canal, immediately upstream of International Dam. As provided in the 1906 Convention a total of 74.008 million cubic meters (60,000 acre-feet) of water is delivered to Mexico annually.

United States Rio Grande Project waters assigned to water districts are currently in part conveyed in the international reach of the Rio Grande. A significant amount of these waters is lost through seepage, evaporation, transpiration, and by unauthorized diversion or collection as they are conveyed in the international reach of the Rio Grande. A significant amount of these water losses could be salvaged by conveying them in the proposed concrete-lined canal extension.

Alternatives Considered

Five alternatives, including the Proposed Action Alternative and the No Action Alternative, were considered during the preparation of the environmental assessment. The alternatives are summarized here:

1. No Action Alternative—Under this alternative, there would be no construction of an extension to the existing American Canal. United States waters in the international reach of the Rio Grande from International Dam to Riverside Diversion Dam would continue to be susceptible to unauthorized diversion or withdrawal and would continue to be lost through seepage, evaporation, and transpiration while flowing in the Rio Grande or the unlined canals. There would be no change in existing facilities or conditions under this alternative, and existing hazards to public health and safety would remain the same.

2. Proposed Action Alternative—This Alternative would ensure the equitable distribution of United States and Mexican waters, reduce water losses that would otherwise occur within the unlined canals and the river channel, and minimize many hazards to public safety and health.

The proposed RGACE is composed of both reconstruction and new construction of a concrete lined channel. Even though work has not yet been authorized for the existing American Canal upstream of International Dam, it is possible that some rehabilitation will be necessary throughout its 3.2 kilometers (1.98 miles) length to make it compatible with the proposed action design capacity of 42 cms (1,500 cfs) and could be accomplished by the construction of parapet walls. An existing portion of the Franklin Canal from International Dam to the Leon Street Wasteway will be reconstructed throughout its 2.4 kilometers (1.48 miles) length as a trapezoidal or rectangular concrete lined channel to convey the design capacity. The existing Wasteway No. 1 in this segment will also be upgraded. The deteriorated, un-reinforced concrete lining in the existing Franklin Canal from the Leon Street Wasteway to the Second Street Lateral will be replaced with reinforced concrete. This 2.3 kilometers (1.45 miles) segment will be designed to convey the design capacity. The new construction segment extends for 20 kilometers (12.5 miles) from the Second Street Lateral to Riverside Diversion Dam. It will incorporate a turnout for the existing Valley Gate Lateral, obliterate the portion of the Playa Lateral which is located between Loop 375 (Border Highway) and the United States Levee of the Rio Grande Rectification Project, and incorporate a turnout for the Playa Lateral at the point where it deviates from the proposed RGACE alignment. The existing Playa Intercepting Drain will be relocated or replaced with a buried pipe. The construction extension will be an open, concrete lined channel designed to convey 42 cms (1,500 cfs).

3. Extension of Existing Canal to Ascarate Wasteway Alternative—This alternative would involve a 7 kilometers (4.3 miles) extension of the American Canal to Ascarate Wasteway. Water delivered to the end of the canal extension would be diverted to the Franklin Canal through the Ascarate Lateral by a pump station or other means and excess flows returned to the Rio Grande for subsequent diversion at Riverside Diversion Dam. This alternative would not accomplish the authorized purpose of keeping United States waters totally out of the Rio Grande between International Dam and Riverside Diversion Dam. Unauthorized diversion or withdrawal of United States waters would continue to occur below Ascarate Lateral. Construction of this alternative would not significantly reduce water losses since seepage losses would continue to accrue in the Rio Grande below Ascarate Lateral. Though the 7 kilometers (4.3 miles) extension would be fenced, existing public health and safety hazards would not be significantly reduced.

4. Franklin Canal Reconstruction Alternative—Under this alternative, the existing Franklin Canal would be reconstructed to convey 42 cms (1,500 cfs) to the heading of the Southside Feeder Canal at Ysleta. The feeder canal would transmit water to the Riverside Canal at a point downstream from the

Riverside Diversion Dam. The Southside Feeder Canal would be reconstructed, a 4.8 kilometers (3 miles) section of the Riverside Canal would require excavation, and the Riverside Wasteway No. 1 would be reconstructed to accommodate the design capacity of 42 cms (1,500 cfs). Even though this alternative meets the criteria of the authorizing legislation, evaluation has shown that it would greatly exceed the design and construction costs of the proposed action. For this reason it is considered the least favored alternative to the proposed RGACE.

5. Regulating Reservoir Alternative—An operational enhancement to the proposed action, the construction of a regulating reservoir near the terminus of the proposed RGACE, was also evaluated in the environmental assessment. The reservoir would have a design capacity of 1.233 million cubic meters (1,000 acre-feet), a maximum water depth of 3 meters (10 feet), and a water surface area of 40 hectares (100 acres). It is estimated that approximately 55.507 million cubic meters (45,000 acre-feet) per year of excess water could be saved by this measure. It does not, however, minimize hazards to public health and safety because persons coming into contact with the reservoir would be exposed to the dangers associated with open bodies of water. Further, no monies have been appropriated by Congress for the study, design, or construction of this operational enhancement to the proposed action.

Environmental Assessment

The U.S. Section completed the Draft Environmental Assessment for the proposed agreement on February 26, 1993. It is currently available for review and comment.

Finding of the Environmental Assessment

The Draft Environmental Assessment finds that the proposed action does not constitute a major federal action which would cause a significant local, regional, or national adverse impact on the environment based on the following:

The Proposed Action Alternative would:

1. Ensure the equitable distribution of United States and Mexican waters;
2. Reduce water losses that would otherwise occur within the unlined canals and the river channel;
3. Minimize many hazards to public safety and health;
4. Benefit fish and wildlife by the implementation of mitigation plans to provide a wetland habitat in association with the proposed action; and
5. Not affect any known cultural resources in the United States now listed on, or proposed for nomination to, the National Register of Historic Places with the exception of a small portion of the existing Franklin Canal which will be properly mitigated for through coordination with the State Historic Preservation Officer.

On the basis of the Draft Environmental Assessment, the U.S. Section has determined that an environmental impact statement is not required for the United States Government to construct the proposed action and hereby provides notice of a finding of no significant impact.

An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice.

The Draft Environmental Assessment and Draft Finding of No Significant Impact have been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. A limited number of copies of these documents are available to fill single copy requests at the above address.

Dated: February 23, 1993.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 93-4840 Filed 3-2-93; 8:45 am]

BILLING CODE 4710-03-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-338]

Certain Bulk Bags and Process for Making Same; Notice of Commission Determination Not To Review Initial Determination Granting Joint Motions To Terminate the Investigation With Respect to Remaining Respondents and Terminating Investigation in Its Entirety

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (ID) in the above-captioned investigation granting joint motions to terminate the investigation with respect to respondents Sanwey Industria de Containers, Ltda. ("Sanwey") and Helios Container Systems, Inc. ("Helios") on the basis of settlement agreements.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000.

FOR FURTHER INFORMATION CONTACT: Lyle B. Vander Schaaf, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3107. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-205-1810.

SUPPLEMENTARY INFORMATION: On May 21, 1992, Better Agricultural Goals Corporation and Super Sack Manufacturing Corporation (collectively "complainants") filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the importation and sale of certain bulk bags that infringe claim 8 of U.S. Letters Patent 4,143,796 and claim 20 of U.S. Letters Patent 4,194,652. On June 5, 1992, complainants filed an amended complaint. On June 18, 1992, the Commission voted to institute an investigation of the complaint and publish notice of its investigation in the **Federal Register** (57 FR 28185 (June 24, 1992)).

On January 15, 1993, complainants and respondent Sanwey jointly moved for termination of this investigation as to Sanwey on the basis of a settlement agreement (Motion Docket No. 338-19). On the same date, complainants and respondent Helios jointly moved for termination of this investigation as to Helios on the basis of a settlement agreement (Motion Docket No. 338-30). The Commission investigative attorney filed papers supporting the joint motions. On January 26, 1993, the presiding administrative law judge issued an ID granting the motions and terminated the investigation in its entirety as there are no remaining respondents. No petitions for review, or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53 (19 CFR 210.53, as amended)

By order of the Commission.

Issued: February 23, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93-4815 Filed 3-2-93; 8:45 am]

BILLING CODE 7020-02-M

[Investigation 337-TA-339]

Certain Commercial Food Portioners, Components Thereof, Including Software, and Process Thereof; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Lumetech, Ltd.; Koch Supplies, Inc.; and Carl Jorgensen Company.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on February 19, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

Issued: February 19, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-4817 Filed 3-2-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-344]

Certain Cutting Tools for Flexible Plastic Conduit and Components Thereof; Notice of Commission Determination Not to Review an Initial Determination Amending the Complaint and Notice of Investigation to Terminate a Respondent

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) (Order No. 6) in the above-captioned investigation amending the notice of investigation to terminate Orbit Underground, d/b/a Orbit Sprinklers, as a respondent.

FOR FURTHER INFORMATION CONTACT: Robin L. Turner, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3103.

SUPPLEMENTARY INFORMATION: On January 25, 1993, the ALJ issued an ID granting a motion by complainants Dawn Industries, Inc., Dextel Inc., and Duane Robertson to amend the complaint and notice of investigation to terminate Orbit Underground, d/b/a/ Orbit Sprinklers, as a respondent in the investigation. Orbit Underground is an unincorporated division of ProMark, Inc. No petitions for review or government agency comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and § 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53(h)).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

By order of the Commission.

Issued: February 23, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93-4816 Filed 3-2-93; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-341]

Proposed Reorganization of U.S. International Trade Relief Laws

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt on December 16, 1992, of a request from the Committee on Ways and Means, U.S. House of Representatives, the Commission instituted investigation No. 332-341, *Proposed Reorganization of U.S. International Trade Relief Laws*, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: For further information, contact P. N. Smithey or William Gearhart, Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3061. Hearing-impaired individuals can obtain further information by contacting the Commission's TDD terminal at 202-205-1810.

SUPPLEMENTARY INFORMATION: The Committee's letter requested that the Commission conduct a study and prepare a report concerning the proposed reorganization of U.S. trade relief laws under which tariffs (including countervailing and antidumping duties) or quantitative or other import restrictions may be imposed (other than the Harmonized Tariff Schedule of the United States). The Committee's letter also indicated that the Commission's proposals should seek to achieve the following objectives: (1) The logical and accessible arrangement of the law; (2) the elimination of duplicative provisions; and (3) the elimination or simplication

of anomalous or illogical provisions, to the extent that this is possible without substantive or procedural changes to the existing provisions of law.

Most of the trade relief laws are currently set forth in title 19 of the United States Code. The Committee has indicated that the Commission's study is not to include the customs laws administered by the U.S. Customs Service or the laws governing the administration of the Commission or the Office of the United States Trade Representative, which are also set forth in title 19.

Some of the trade relief provisions that will be covered by the Commission's report are administered by other agencies, such as the U.S. Department of Commerce and the U.S. Customs Service. The Committee accordingly has directed the Commission to consult with those agencies in the preparation of the report.

The Commission report that will be issued at the conclusion of the study will have two parts. Part I will outline a Commission proposal for reorganizing the relevant laws into a proposed import relief chapter for possible inclusion in title 19 of the United States Code. The text of the proposed chapter will be provided as well. Part II of the report will consist of a section-by-section analysis of the proposed import relief chapter.

Before preparing the report for submission to the Committee, the Commission will consult with the appropriate agencies and prepare a draft of the proposed import relief chapter. The Commission expects to have the draft ready by late June of 1993 and will publish notice of its availability and opportunity for comment at that time. No public hearing is currently scheduled in connection with this investigation.

Issued: February 22, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–4818 Filed 3–2–93; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32240]

Bradford Industrial Rail, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corporation; Notice of Exemption

Bradford Industrial Rail, Inc. (BIR), a noncarrier, has filed a verified notice under 49 CFR 1150 subpart D—*Exempt Transactions* to exempt its acquisition and operation of about 3.73 miles of rail line owned by Consolidated Rail Corporation (Conrail) between milepost 9.6, at East Bradford, PA, and milepost 13.33, at Bradford, PA. In addition, Conrail will assign to BIR its incidental trackage rights over 15.11 miles of rail line owned by Buffalo & Pittsburgh Railroad, Inc., between milepost 107.0, at Salamanca, and milepost 121.3, near Bradford. The exemption became effective February 4, 1993.[1]

Genesee & Wyoming Industries, Inc., has filed a petition for exemption in Finance Docket 32241 to continue to control BRI on its becoming a carrier.

Any comments must be filed with the Commission and served on: Charles D. Cramton, of Harter, Secrest & Emery, 700 Midtown Tower, Rochester, NY 14604.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 25, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–4845 Filed 3–2–93; 8:45 am]

BILLING CODE 7035–01–M

[1] According to the verified notice (at page 3), the proposed transactions were to have been consummated "on or *before* February 4, 1993, following the [exemption's] effective date" (emphasis added). Since the verified notice was not filed until January 28, 1993, and the exemption did not become effective until 7 days thereafter, on February 4, the transactions could not have been consummated before then.

[Ex Parte Nos. 399 and 431 (Sub-No. 2)]

Cost Recovery Percentage and Review of the General Purpose Costing System

AGENCY: Interstate Commerce Commission.

ACTION: Adoption of individual carrier "make-whole" adjustments for use in rail costing.

SUMMARY: The Commission has adopted the use of the so called individual carrier "make-whole" adjustments as part of the annual calculation of the Cost Recovery Percentage (CRP) and for inclusion in the URCS Phase III costing program. The use of the individual carrier "make-whole" adjustments in CRP costing is supported by both railroad and shipping interests party to these proceedings. The Commission believes that the inclusion of individual carrier "make-whole" adjustments in the URCS Phase III program will permit users that do not have actual data to better estimate the higher costs of single car shipments.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas A. Schmitz, (202) 927–5720, Jeff Warren, (202) 927–6242 (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, or call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

This action will not significantly affect either the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321, 10709, 5 U.S.C. 553.

Decided: February 23, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–4821 Filed 3–2–93; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 347 (SUB–NO. 2)]

Rate Guidelines; Non-Coal Proceedings

In a Notice of Proposed Guidelines ("NPG") served November 16, 1992, (57 FR 54252, November 17, 1992) we requested comments on three methods of evaluating the reasonableness of railroad rates on relatively low-volume or infrequent shipments. Tables in the appendix of the NPG contained the results of calculations used in developing two of the methodologies. The tables on pages 8, 9 and 16 of the appendix have been revised to incorporate 1991 data and to correct computational errors.

We also note that our NPG used both regional and individual carrier make-whole adjustments in developing costs. In a decision March 1, 1993 in Ex Parte No. 399, Cost Recovery Percentage, a carrier specific make-whole adjustment was adopted for all waybill costing exercises. As a result of this decision, all reference to, and use of, regional make-whole adjustments in the NPG should be disregarded.

For further information contact: Thomas A. Schmitz (202) 927–5720 or

H. Jeff Warren (202) 927–6442 (TDD for hearing impaired: (202) 927–5721).

Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

As this decision affects only minimal changes to our action in this proceeding, it will not have a substantial adverse impact upon a significant number of small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: February 19, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L Strickland, Jr.,

Secretary.

[FR Doc. 93–4822 Filed 3–2–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32254]

Fox River Valley Railroad Corporation Trackage Rights Exemption—Wisconsin and Southern Railroad Company; Notice of Exemption

Wisconsin and Southern Railroad Company has agreed to grant trackage rights to Fox River Valley Railroad Corporation over approximately 9.4 miles of rail line between milepost 103.1 at DBR Junction, near Granville, WI, and milepost 93.7 at North Milwaukee, WI. The trackage rights were to become effective on February 18, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Charles A. Spitulnik, Hopkins & Sutter, 888 Sixteenth Street, NW., suite 700, Washington, DC 20006.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino, Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: February 25, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–4846 Filed 3–2–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

February 26, 1993.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jefferson B. Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514–4115 or facsimile: (202) 514–1534. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Biographic Information.

(2) Form G–325. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This form will be used by the Immigration and Naturalization Service to check other agency records to ensure that Service action is in the best interest of the United States.

(5) 1,044,994 annual responses at .25 hours per response.

(6) 261,249 annual burden hours.

(7) Not applicable under 3504(h).

(1) Application for Certificate of Citizenship.

(2) Form N–600. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This form will be used by the Immigration and Naturalization Service to determine the eligibility for issuance of a Certificate of Citizenship to a person who claims to have derived or acquired U.S. citizenship.

(5) 30,000 annual responses at 1 hour per response.

(6) 30,000 annual burden hours.

(7) Not applicable under 3504(h).

(1) Petition to Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition.

(2) Form I–600 and Form I–600A. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. These forms will be used by the Immigration and Naturalization Service to determine eligible orphans and for advanced processing of said orphans.

(5) 34,000 annual responses at .5 hour per response.

(6) 17,000 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on the these items is encouraged.

Dated: February 26, 1993.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 93–4867 Filed 3–2–93; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby

given that a meeting of the Design Arts Advisory Panel (Project Grants for Organizations Section) to the National Council on the Arts will be held on March 24–25, 1993 from 9 a.m.–7 p.m. and March 26 from 9 a.m.–4 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsvylaniva Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on March 24 from 9 a.m.–10 a.m. and March 26 from 3 p.m.–4 p.m. for policy discussion.

The remaining portions of this meeting on March 24 from 10 a.m.–7 p.m., March 25 from 9 a.m.–7 p.m. and March 26 from 9 a.m.–3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506 or call (202) 682–5439.

Yvonne M. Sabine,

Director, Panel Operations; National Endowment for the Arts.

[FR Doc. 93–4847 Filed 3–2–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Instrumentation and Resources; Notice of Amendment

The meeting of the Special Emphasis Panel in Biological Instrumentation and Resources scheduled to be held March 8–9, 1993 at the National Science Foundation in Washington, DC has been changed to March 12–13, 1993.

The notice for this meeting originally appeared in the February 18, 1993 issue of the **Federal Register**, Vol. 58, No. 31, p. 8997.

Dated: February 25, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–4793 Filed 3–2–93; 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 or NRC staff) 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 February 5, 1993, through February 19, 1992. The last biweekly notice was published on February 17, 1993 (58 FR 6992).

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a 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 Rules and Directives Review 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. Federal workdays. 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 April 2, 1993, 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 N1023 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.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: November 16, 1992

Description of amendment request: The proposed amendment would revise Technical Specification 3.6.3.4, "Suppression Pool Makeup (SPMU) System," to allow continued operation with a reduced upper containment pool water level when the minimum required suppression pool water level is increased to compensate. The revision will allow for maintenance in portions of the upper containment pool. The proposed amendment also clarifies the requirements for the upper containment pool gate positions.

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 changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The function of the upper containment pool (UCP) as part of the suppression pool makeup (SPMU) system is to provide a source of makeup water to the suppression pool (SP), subsequent to the occurrence of a LOCA [loss of coolant accident], in order to maintain the required horizontal vent coverage and provide an adequate suppression pool heat sink to ensure the

primary containment internal pressure and temperature stays within design limits.

The proposed Action statement and Surveillance Requirement to permit reductions in the upper containment pool level, maintains the same "effective upper containment pool water volume" as the current design basis, the difference being that some of this "effective UCP water volume" has been relocated to the suppression pool as additional volume needed beyond that required to meet the minimum suppression pool low water level requirement of Limiting Condition for Operation 3.6.3.1.a. The probability of a LOCA occurring has not increased as a result of the proposed changes since the probability of a LOCA is unaffected by a relocation of the UCP water. The consequences of a LOCA are also not changed because under normal operating conditions the upper containment pool level is maintained within the required limits by the administrative controls imposed through the SPMU system Technical Specification Action and Surveillance Requirements. This change simply extends that approach by providing an additional Action and Surveillance Requirement to ensure that both the upper containment pool and suppression pool are maintained within their proposed respective limits (which ensure that the effective UCP water volume is maintained) when the upper containment pool is below its normal level. The proposed surveillance requirement ensures that the same "effective upper containment pool water volume" is always maintained. Therefore, there is no change in the overall water volume available as a heat sink for long-term cooling, no reduction in containment performance, and hence no change in consequences for any postulated LOCA.

There is also no change in the probability of occurrence of an inadvertent SPMU system dump, since no change has been made to the system design or initiating circuitry. This change clarifies that the fuel transfer tube pool gate is not required to be installed, but that it may be left in place, if desired, to allow for maintenance of equipment within the fuel transfer tube pool. With the gate installed the same amount of UCP water is available as was assumed in the current inadvertent dump analysis, therefore there is no change in consequences. With the gate removed there would be a slight increase in the volume of water contained in the UCP which would be dumped in the event of an inadvertent upper containment pool dump. However, there is a very small likelihood of an inadvertent UCP dump due to the necessity to have a LOCA permissive signal in conjunction with a low-low suppression pool level signal or the completion of a 30-minute time delay. The total volume would only actually be increased if the dump were to occur when the suppression pool is at its high water level (with maximum differential pressure). Even if a UCP dump were to occur, a bounding analysis (for up to ten feet of water in the drywell) for the drywell piping and components wetted in this event under worst case conditions has demonstrated that there would be no safety concerns. This analysis was reviewed and agreed with by the NRC as documented in Section 10.1 of Appendix R to Supplement 8 of the Safety Evaluation Report for Perry (NUREG-0887). Therefore, removing the fuel transfer tube pool gate during Operational Conditions 1,2, and 3 does not impose a significant increase in consequences, regarding a drywell flooding transient, while it does provide a positive benefit in that extra water would be made available to provide for the long-term energy absorption within the suppression pool.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because no design changes or new or different modes of operation are proposed for the plant. Operation under the proposed Action statement and Surveillance Requirement (determined to be acceptable on the basis discussed above) does not constitute a different mode of operation since adequate monitoring of both the suppression pool and upper containment pool levels is required by the Technical Specification Surveillance Requirements under both normal and reduced UCP water level conditions. The required upper containment pool gate positions are also controlled by Surveillance Requirements. The proposed Action statement and Surveillance Requirements on pool levels and gate positions ensure that the same (or greater) "effective upper containment pool volume" is available following an UCP dump, which is equivalent to the current design basis, therefore, the proposed changes do not create the possibility of a new or different accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The design basis of the suppression pool makeup system is to provide a makeup volume from the UCP following an UCP dump, that together with the suppression pool volume (between the normal low water level (LWL) and the minimum post-accident water level) is sufficient to account for all conceivable post-accident entrapment volumes, to ensure the long-term energy sink capabilities of the suppression pool and maintain the two foot minimum water coverage over the uppermost horizontal vents. This capability is currently enforced by maintaining the water level within the suppression pool above the LWL (through Specification 3.6.3.1) and maintaining the upper containment pool above its minimum water level (through Specification 3.6.3.4). Adding Action statements and Surveillance Requirements to provide an alternative way of maintaining the same volume of water between the upper containment pool and the suppression pool does not reduce, but rather maintains the same margins of safety, provided that both the suppression pool and the upper containment pool levels are properly controlled. The water level values chosen, and enforced through the new Action and Surveillance Requirement meet both sets of requirements and consequently do not reduce the margin of safety. As described in the answer to question 1, a very unlikely set of circumstances has to occur to initiate an upper containment pool dump, and even if a dump were to occur, a bounding analysis for the drywell piping and components wetted in this event under worst case conditions has demonstrated that there would be no safety concerns. Therefore, removing the fuel transfer tube pool gate during Operation Conditions 1, 2, and 3 does not impose a significant reduction in the margin of safety, regarding a drywell flooding transient, while it does provide a positive benefit in that extra water would be made available to provide for the long-term energy absorption within the suppression pool (which would increase the margin of safety in this respect).

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: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: November 5, 1992

Description of amendment request: The proposed amendment would delete the Technical Specification requirements to perform additional surveillances when the associated redundant components and/or subsystems have been found to be inoperable.

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 change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change does not result in any hardware or operating procedure changes. The components covered by these Technical Specifications are not assumed to be initiators of any analyzed event. The components are assumed to be mitigators of analyzed events. This change redefines the method for demonstrating OPERABILITY of the remaining equipment when a component is declared inoperable. The requirement to maintain the remaining equipment OPERABLE is retained, ensuring the equipment is available to mitigate analyzed events. Since the equipment remains

OPERABLE, redefining the method by which the equipment is demonstrated OPERABLE does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will only redefine the method by which remaining equipment is verified OPERABLE when a component is declared inoperable. Redefining the method by which equipment is demonstrated OPERABLE does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

This change eliminates the requirement to perform surveillances on equipment when a component is declared inoperable. Instead, this change allows credit to be taken for normal periodic surveillances as a demonstration of OPERABILITY and availability of the remaining components. The periodic frequencies specified to demonstrate OPERABILITY of the remaining components have been shown to be adequate to ensure equipment OPERABILITY. As stated in NRC Generic Letter 87-08, "It is overly conservative to assume that systems or components are inoperable when a surveillance requirement has not been performed. The opposite is in fact the case; the vast majority of surveillances demonstrate that systems or components in fact are operable." Therefore, reliance on the specified surveillance intervals does not result in a reduced level of confidence concerning the equipment availability. In addition, the current surveillance requirements for the affected components are more comprehensive than the current testing requirements being deleted. Therefore, the normal surveillance requirement approach can be judged to be an equivalent or more reliable testing program as compared to the requirements being deleted. Thus, this change does 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: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: December 8, 1992

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to: (1) extend the frequency of the Reactor Protection System (RPS) instrument channel tests in Table 4.1-1 from monthly to every 45 days on a staggered test basis, (2) add the definition of "staggered test basis" to TS Section 1.5, and (3) remove the time limitation in Table 3.5.1-1 on placing one RPS channel in bypass and one channel in the tripped condition. Also, the Bases would be revised to be consistent with the above 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, which is presented below:

Duke Power Company has made the determination that [...] 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:

Each accident analysis addressed within the Oconee Final Safety Analysis Report (FSAR) has been examined with respect to the change proposed within this amendment request. The probability of any Design Basis Accident (DBA) is not affected by this change, nor are the consequences of a DBA affected by this change since extension of the RPS on-line test interval and removal of limitations on placing one RPS channel in trip and one RPS channel in bypass based on an NRC approved Topical Report are not considered to be an initiator or contributor to any accident analysis addressed in the Oconee FSAR. Plant specific provisions of the associated NRC SER regarding drift data have been met. The probability of any DBA is not affected by this change, nor are the consequences of a DBA affected by this change since addition of the definition of "staggered test basis" is not considered to be an initiator or contributor to any accident analysis...addressed in the Oconee FSAR.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

Operation of ONS in accordance with these Technical Specifications will not create any failure modes not bounded [by] previously evaluated accidents. Consequently, this change will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

(3) Involve a significant reduction in a margin of safety:

The Technical Specifications will continue to require the RPS trip setpoints [to] remain within the assumptions of the accident analysis, thus preserving existing margins of safety. Therefore, there will be no significant reduction in any 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: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: November 10, 1992

Brief description of amendment: The proposed amendment would revise the Administrative Controls of the Technical Specifications (TSs) for each unit to change the qualifications of the Plant Safety Committee (PSC) to be independent of position titles. The proposed amendment would also incorporate the Technical Review and Control Process to facilitate procedure revision, change the approval authority for procedures to a more appropriate level of management and correct a typographical error.

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:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The change in the PSC composition qualification requirements is administrative in nature. The proposed changes do not affect assumptions contained in the plant safety analyses, the physical design or operation of the plants. TS that preserve the safety analyses assumptions of ANO-1 and ANO-2 are not affected by the changes. The same level of expertise applied to the PSC review function will remain with the approval of the proposed changes. There will be no loss in PSC effectiveness due to the proposed changes. The typographical error correction in the ANO-1 TS is purely administrative in nature, and has no affect on plant safety.

The addition of the Technical Review and Control Process to the TS provides an additional method for the technical review and approval of selected station procedures, while maintaining an equivalent level of

thoroughness consistent with that established by the PSC. An independent technical review, conducted by an individual whose qualification and knowledge encompass the area affected by the procedure, combined with the added expertise contributed by the cross-disciplinary review will establish an equivalent level of review to that provided by the PSC. The Technical Review and Control Process will be controlled by station administrative procedures which will continue to be reviewed by the PSC, thereby allowing PSC oversight of the process.

Approval of procedures reviewed by the Technical Review and Control Process may be performed by the department head responsible for the affected procedure, after ensuring all necessary procedure reviews and cross-disciplinary reviews have been completed. Additionally, the General Manager, Plant Operations has the option of designating a higher approval authority for any procedure or block of procedures.

The procedures governing plant operation will continue to ensure that the plant parameters are maintained within acceptable limits. Procedure changes will be reviewed and approved at a level commensurate with their importance to nuclear safety and, where appropriate, an interdisciplinary review will be required. All modifications, tests, and experiments that affect nuclear safety will continue to be reviewed by the PSC. Also, the PSC will continue to review the Plant Security Plan, Emergency Plan, and Fire Protection Program.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes are administrative in nature. No physical alterations of plant configuration or changes to setpoints or operating parameters are proposed. The level of position qualifications of the PSC members are not reduced in the TS. The same quality of PSC review is maintained by this proposed change.

Because no new equipment is being introduced, and no equipment is being operated in a manner inconsistent with its design, the probability of equipment malfunction is not increased. The applicable procedures governing the operation of installed equipment will receive reviews and approvals at a level commensurate with their importance to nuclear safety and, where appropriate, an interdisciplinary review will be required. This provides an equivalent level of review to that provided by the PSC. The PSC will continue to review all modifications, tests, and experiments that affect nuclear safety ensuring a continuing commitment to nuclear safety by ANO management.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

[Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.]

The proposed changes are administrative in nature and do not relate to or modify the safety margins defined in and maintained by the TS. The change does not alter ANO's commitment to maintain a management structure that contributes to the safe operation and maintenance of the plants. No position qualifications are being reduced in the TS. The level and quality of PSC review is maintained because there will be no change in the collective expertise on the PSC. The independent review of those items important to nuclear safety by the PSC will continue with these changes.

The initial conditions utilized in the accident analyses remain unchanged. The methodologies used for the safety analyses are not affected by this change. Sufficient controls are included in the proposed review methodology to ensure that the plant conditions and equipment availability required to support the integrity of the analyses, and hence the margin to safety, will continue to be maintained.

Therefore, this change does not involve 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: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: George T. Hubbard, (Acting)

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: George T. Hubbard, (Acting)

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: February 11, 1993

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) 6.0, "Administrative Controls" of the Turkey Point Units 3 and 4 relating to the qualifications of the plant Operations Manager. Presently, TS 6.2.2.h. requires the Operations Supervisor to hold a Senior Reactor Operator (SRO) License and TS 6.2.2.i. requires that the Operations Manager either hold or have held a SRO License on the Turkey Point plants or on a similar plant. The licensee proposes to revise the TS to require that either the Operations Manager or the Operations Supervisor hold an active SRO License on the Turkey Point plants. Accordingly, the proposed changes would delete TS 6.2.2.i. and revise TS 6.2.2.h. to read "The Operations Manager or the Operations Supervisor shall hold a Senior Reactor Operator License." Consistent with the proposed TS 6.2.2.h. change, the phrase in TS 6.3.1, "...the Operations Manager whose requirement for a Senior Reactor Operator License is as stated in Specification 6.2.2.h..." would be editorially revised to read "...the Operations Manager or Operations Supervisor whose requirement for a Senior Reactor Operator License is as stated in Specification 6.2.2.h..."

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) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes being proposed are administrative in nature, address organizational issues, and do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions.

The individual Florida Power & Light Company (FPL) chooses to fill the position of Operations Manager will have extensive educational and management-level nuclear power experience meeting the criteria of standard ANSI N18.1-1971. The Operations Supervisor and Nuclear Plant Supervisors maintain SRO Licenses on Turkey Point. The current Technical Specifications do not require the Operations Manager to hold an active SRO License at Turkey Point. In fact, the current Technical Specifications permit the Operations Manager to have held an SRO License on a similar plant (i.e. another pressurized water reactor). Since the proposed change will continue to require that at least one individual in the operations organization off-shift management chain of command hold an SRO License at Turkey Point, there will be no change in the operations management operational experience at Turkey Point.

Additionally, the proposed changes do not impact nor change, in any way, the minimum on-shift manning or qualifications for those individuals responsible for the actual licensed operation of the facility.

Based on the above, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. The proposed changes address organizational and qualifications issues related to the criteria used for assignment of individuals to the operations organization off-shift management chain of command. In light of the above, and since the proposed changes do not impact nor change, in any way, the minimum on-shift manning or qualifications for those individuals responsible for the actual licensed operation of the facility, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed changes address organizational and qualifications issues related to the criteria used for assignment of individuals to the operations organization off-shift management chain of command. The proposed changes do not impact nor change, in any way, the minimum on-shift manning or qualifications for those individuals responsible for the actual licensed operation of the facility. FPL's operating organization at Turkey Point Plant is shown on Figure 1-2, Appendix A of the NRC-approved FPL Topical Quality Assurance Report (TQAR). Since changes to the TQAR are governed by 10 CFR 50.54(a)(3), any changes to the TQAR that reduce commitments previously accepted by the NRC require approval by the NRC prior to implementation. FPL will continue to inform the NRC of any organizational changes affecting Turkey Point Plant.

While the Operations Manager is responsible for the plant's operating organization, his responsibilities also include management of the plant's Health Physics and Chemistry departments. The on-shift operations organization is supervised and directed by the Operations Supervisor, who is currently required by Technical Specification 6.2.2.h. to hold a Senior Reactor Operator License. Since the Technical Specifications do not require that the Operations Manager maintain an SRO License (nor even that the incumbent has ever held a Senior Reactor Operator License at Turkey Point), the other qualifications guidance of standard ANSI N18.1-1971, as required by Turkey Point Technical Specification 6.3.1, *FACILITY STAFF QUALIFICATIONS*, will ensure that the individual filling the Operations Manager position has the requisite education and experience for the management position. As a result, operation of the facility in accordance with the proposed amendment would 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 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: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: April 16, 1991, as supplemented by letter of January 6, 1993

Description of amendments request: The proposed amendments would make changes to the Technical Specifications (TS) in accordance with the guidance of Generic Letter (GL) 90-06. Specifically, TS 3.4.9.3, "Overpressure Protection System," TS 3.4.11, "Relief Valves - Operating," and the applicable bases would be changed to reflect guidance contained in GL 90-06 regarding power operated relief valves (PORVs) and low-temperature overpressure protection (LTOP), with some exceptions and modifications to reflect plant-specific design features. The changes would require different actions for a PORV that is inoperable because of excessive leakage rather than any other reason, and add additional surveillances to be conducted in Mode 3 for verifying PORV operability. The changes also allow the use of a blocked open PORV as a suitable vent path in low pressure conditions as well as apply a more conservative allowable outage time for a single LTOP channel.

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 not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed [TS] changes in this submittal generally adopt the PORV and overpressure protection [TS] proposed by the staff in Generic Letter 90-06 with three exceptions, and also with minor modifications necessary to reflect the plant-specific design features of Cook Nuclear Plant. The staff's proposed [TS] will result in an increase in PORV and block valve reliability as well as additional LTOP. Since the proposed [TS] changes augment or preserve the requirements contained in the current Cook Nuclear Plant [TS], and since the three exceptions to GL 90-06 retain the current [TS] requirements, it is concluded that the proposed [TS] changes do not involve a significant increase in the probability or consequences of an accident previously analyzed in Chapter 14, "Safety Analysis," of the Updated FSAR [Final Safety Analysis Report] for Cook Nuclear Plant.

(2) Does not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

The proposed [TS] changes either retain or enhance the LCOs, action statements, and surveillance requirements of the current Cook Nuclear Plant [TS]. It is concluded, therefore, that the proposed [TS] changes do not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated in Chapter 14, "Safety Analysis," of the UFSAR.

(3) Does not involve a significant reduction in a margin of safety.

The proposed [TS] changes either retain or enhance the LCOs, action statements, and surveillance requirements of the current Cook Nuclear Plant [TS]. It is concluded, therefore, that the proposed [TS] 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 amendments request involves no significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: L. B. Marsh

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: May 1, 1992

Description of amendments request: The proposed amendments would make changes to the Technical Specifications (TS) in accordance with the guidance of Generic Letter (GL) 90-09. The changes would revise the visual inspection surveillance requirements and the acceptance criteria associated with TS-related snubbers. Additionally, the changes would remove the snubber component lists contained in TSs in accordance with the guidance contained in GL 84-13.

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) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes do not result in any physical change to the facility which could cause an increase in the probability or consequences of any previously evaluated accident. The requested changes incorporate the alternative inspection schedule provided by the NRC in Generic Letter 90-09, dated December 11, 1990, and remove the snubber component lists from the [TS] in accordance with the guidance set forth in Generic Letter 84-13, dated May 3, 1984.

As determined by the NRC, the alternative schedule for visual inspections maintains the same confidence level as the existing schedule and, therefore, does not affect the probability or consequences of an accident previously evaluated.

The removal of the snubber component lists from the [TS] will not alter the existing [TS] requirements nor change the components to which they apply. The lists being removed from the [TS]s will be placed under administrative control and a 10 CFR 50.59 evaluation will be required for changes in snubber quantities, types, or location. The editorial changes to the [TS] will not affect the probability or consequences of an accident in any way, they merely reflect the shifting of page numbers. Therefore, the proposed amendment does not involve a change in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed amendment does not create the possibility of a new or different kind of accident previously evaluated. The proposed amendment does not result in any physical change to the plant or method of operating the plant from that allowed by the [TS]. No new failure modes have been defined for any system or component nor has any new limiting single failure been identified.

The NRC has generically reviewed the proposed changes and has determined that the alternative snubber visual inspection interval maintains the same confidence level in snubber operability. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

The removal of snubber component lists will not alter existing [TS] requirements or those components to which they apply. No physical changes are being made to the facility as a result or in support of the removal of the component lists. Since the requirements for the components will remain the same, this proposed amendment will not affect the outcome of previously evaluated accidents. A 10 CFR 50.59 review will be performed for changes to the administrative snubber list to ensure that an unreviewed safety question, such as a new accident, does not result from future changes in the list. The editorial changes to the [TS] will not affect the previously evaluated accidents since they do not change the meaning of any [TS]. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant reduction in the margin of safety. As stated above, the proposed amendment incorporates the alternative [TS] requirements for visual inspections of snubbers provided by the NRC in Generic Letter 90-09 and removes the snubber component lists from the [TS] in accordance with the guidance set forth in Generic Letter 84-13.

The NRC has previously reviewed these changes and determined that the alternative visual inspection interval maintains the same confidence level in snubber operability. The removal of the component lists from the [TS] will not alter the existing [TS] requirements nor change the components to which they apply. The component lists will be incorporated into plant procedures that are subject to the change control provisions for plant procedures specified in the administrative controls section of [TS]. Since neither the list of components nor the requirements that those components are required to meet are changing, the margin of safety is not affected.

The editorial changes made to refine the [TS] will not affect the margin of safety. Consequently, the proposed amendment, including both changes, does not involve 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 amendments request involves no significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: November 11, 1992

Description of amendments request: The proposed amendments would increase the tolerances for the main steam safety valves to within three percent of set point for both units as contained in Table 4.7-1 (Unit 1) and Table 3.7-4 (Unit 2) of Technical Specification (TS) 3.7.1.1 "Safety Valves." The amendments would also modify Unit 2 TS 3.5.2 to provide a limitation to the allowable thermal power when a safety injection cross-tie valve is closed.

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) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Based on the analyses presented in Attachment 4, [Westinghouse Report SECL-91-429, Rev. 1, "Donald C. Cook Units 1 and 2, Main Steam Safety Valve Lift Setpoint Tolerance Relaxation≥] all of the applicable LOCA and non-LOCA design basis acceptance criteria are satisfied. Although increasing the valve setpoint [tolerances] may result in an [increased steam release to the environment]... in the event of a steam generator tube rupture [that is] above the current UFSAR [Updated Final Safety Analysis Report] value foundin Chapter 14.2.4 for both units by approximately 0.2 percent, the analysis indicates that the calculated doses are within a small fraction of the [10 CFR 100] dose guidelines. The evaluation also concludes that the existing mass releases used in the offsite dose calculations for the remaining transients (i.e., steam line break, rod ejection) are still applicable.

There are no hardware modifications to the valves and, therefore, there is no increase in the probability of a spurious opening of a MSSV. Sufficient margin exists between the normal steam system operating pressure and the valve setpoints with the increased tolerance to preclude an increase in the probability of actuating the valves.

Based on the above, there is no significant increase in the probability of an accident previously evaluated in the UFSAR or in the dose consequences.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

Increasing the lift setpoint tolerance on the MSSVs [main steam safety valves] does not introduce a new accident initiator mechanism. No new failure modes have been defined for any system or component important to safety nor has any new limiting single failure been identified. No accident will be created that will increase the challenge to the MSSVs and result in increased actuation of the valves. Therefore, the possibility of a new or different kind of accident than any already evaluated in the UFSAR is not created.

(3) Involve a significant reduction in a margin of safety.

As discussed in the safety evaluation (Attachment 4), the proposed increase in the MSSV lift setpoint tolerance will invalidate neither the LOCA nor the non-LOCA conclusions presented in the UFSAR accident analyses of record. The new loss of load/turbine trip analysis concluded that all applicable acceptance criteria are still satisfied. For all the UFSAR non-LOCA transients, the DNB design basis, primary and secondary pressure limits, and dose limits

continue to be met. Peak cladding temperatures remain below the limits specified in 10 CFR 50.46 for normal operation and when the thermal power is reduced to compensate for closure of the safety injection cross tie valves as required by the proposed Technical Specifications. The calculated doses resulting from a steam generator tube rupture event remain within a small fraction of the 10 CFR 100 permissible releases. Thus, there is no reduction in the margin to 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 amendments request involves no significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: L. B. Marsh

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: December 16, 1992

Description of amendments request: The proposed amendments would allow the use of digital instrumentation in the reactor protection system. The amendments would add conditions to the Unit 1 and 2 licenses stating that the licensee is authorized to use digital signal processing instrumentation in the reactor 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) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The Foxboro SPEC 200 and SPEC 200 MICRO lines of instrumentation are designed to mitigate anticipated operational occurrences and design basis accidents by actuating the reactor trip and engineered safeguards signals credited in the Cook Nuclear Plant safety analyses (see Attachment 5, Report No. 2985-WGS-03, "SPEC 200/SPEC 200 MICRO Hardware and Firmware System Description"). This instrumentation is designed to monitor and process signals for temperature, pressure, fluid flow, and fluid level (see Attachment 5, Report No. 2985-HEI-01, "Summary Report for Response Time Evaluations," and Report No. 2985-SKF-01, "Technical Specification Compliance Assessment"). While it is a form, fit and functional replacement for the existing Foxboro reactor protection system instrumentation, its reliability and availability is better than that of the present instrumentation (see Attachment 5, Report No. 2985-HEI-15, "Reliability and MTBF Analysis"). As such, in the highly unlikely event that the new instrumentation experiences a failure, the consequences will not exceed those caused by a failure of the existing system. The new instrumentation's failure modes and effects are discussed in Attachment 5 in Report No. 2985-HEI-14, "Failure Modes and Effects Analysis Protection Set 1 Foxboro SPEC 200."

Since the ability of the reactor protection system to detect faults and initiate protective action is not reduced and since the FSAR analyses remain bounding as indicated above, the probability or consequences of accidents previously analyzed are not increased.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The Foxboro SPEC 200 and SPEC 200 MICRO instrumentation is designed to mitigate anticipated operational occurrences and design basis events by actuating reactor trip or engineered safeguards signals credited in the safety analyses. The instrumentation is designed to monitor and process signals for temperature, pressure, fluid flow, and fluid levels. It is a form, fit and functional replacement for the existing Foxboro analog instrumentation.

To ensure that the equipment will perform as required, extensive measures have been taken to ensure that the response of the new instrumentation is enveloped by the design basis accident analyses contained in Chapter 14 of the Cook Nuclear Plant FSAR. This is demonstrated, in part, in reports that are summarized in Attachment 5 including: Report No. 2985-VDV-01, "Reactor Protection Functional Diversity Assessment;" Report No. 2985-HEI-01, "Summary Report for Response Time Evaluations;" and Report No. 2985-SKF-01, "Technical Specification Compliance Assessment".

Application of the Foxboro instrumentation in the Cook Nuclear Plant reactor protection system includes, among other things, such considerations as single failure, independence, functional diversity, and separation criteria. In addition, the response of the instrumentation during events such as station blackout and design basis earthquake was assessed. The reports contained in Attachment 5 summarize these efforts.

An analysis of the response times of the instrumentation indicates that they will be bounded by the existing FSAR analyses and existing Cook Nuclear Plant technical specification limits (see Attachment 5, Report No. 2985-HEI-01, "Summary Report for Response Time Evaluations").

With regard to the application of digital technology in the Cook Nuclear Plant reactor protection system, a battery of EMI/RFI evaluations was performed, as discussed in Report No. 2985-HEI-03, "Preliminary EMI/RFI Evaluation." These evaluations concluded that the EMI/RFI environment at Cook Nuclear Plant is suitable for the application of this type of equipment.

The SPEC 200 and SPEC 200 MICRO have been designed, verified, and validated to be in compliance with the protection system functional requirements. This statement is supported by Report No. 2985-DPS-01, "Functional Requirement Summary," and Report No. 2985-HHH-01, "Qualification Compliance," both of which are provided in Attachment 5. Additionally, reliability studies of the instrumentation, as well as the verification and validation studies and the equipment qualification programs, indicate that the susceptibility of the reactor protection system to common mode failure mechanisms will be reduced. (See Attachment 5, Report No. 2985-HEI-15, "Reliability and MTBF Analysis.")

A failure of the digital instrumentation will not create a new or different accident. In the highly unlikely event that the new reactor protection system instrumentation should fail, the consequences experienced would be equivalent to those experienced if the existing equipment failed. (See Attachment 5, Report No. 2985-HEI-14, "Failure Modes and Effects Analysis Protection Set 1 Foxboro SPEC 200," and Report No. 2985-VDV-01, "Reactor Protection Functional Diversity Assessment.")

Consequently, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated for the Cook Nuclear Plant.

(3) Involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety. The accuracy and reliability of the reactor protection system will be improved with the installation of the Foxboro SPEC 200 and SPEC 200 MICRO instrumentation (see Attachment 5, Report No. 2985-HEI-15, "Reliability and MTBF Analysis"). The various reactor trip and engineered safeguard actuation circuits continue to provide signals to automatically open the reactor trip breakers or actuate engineered safeguards equipment, as applicable, whenever a condition monitored by the reactor protection system or the engineered safeguards features actuation system reaches a preset or calculated level. In addition to redundant channels and trains, the protection system will continue to monitor numerous system variables, thereby providing protection system functional diversity (see Attachment 5, Report No. 2985-VDV-01, "Reactor Protection Functional Diversity Assessment").

In addition, since it is assumed that our overall response times and setpoint and allowable values will continue to remain bounding (see Attachment 5, Report No. 2985-HEI-01, "Summary Report for Response Time Evaluations," and Report No. 2985-SKF-01, "Technical Specification Compliance Assessment"), the results and conclusions of the accident analyses remain valid, as supported by Report No. 2985-VDV-01, "Reactor Protection Functional Diversity Assessment," contained in Attachment 5. Response time testing performed as part of the factory acceptance testing will verify that the response times assumed in the accident analyses are not exceeded.

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 amendments request involves no significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: L. B. Marsh

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: January 29, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by changing the surveillance interval for the Source Range Monitor (SRM) functional test from daily to weekly. In a previous TS amendment the surveillance interval was erroneously changed to daily.

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 change does not increase the probability or consequences of an accident occurring because it merely corrects an error and restores the appropriate surveillance interval for the SRM functional test. No other changes are proposed.

2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because this change to the surveillance interval merely corrects a previous error and is consistent with DAEC and NRC guidance.

3) The margin of safety will not be reduced since the change corrects an error as noted above and therefore does not affect 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: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 1, 1993.

Description of amendment request: The proposed amendment would revise the technical specifications (TS) for the Cooper Nuclear Station (CNS) to (1) incorporate the NRC staff position on leak detection per the guidance of Generic Letter 88-01 and its supplement, (2) incorporate the NRC staff position on inservice inspection schedules, methods, personnel, and sample expansion per the guidance of Generic Letter 88-01 and its supplement, and (3) make administrative changes where certain system names are replaced by system names which are more consistent with those used in other portions of the TS and the implementing surveillance procedures.

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?

The first proposed change addresses the NRC position on leak detection, delineated in Generic Letter 88-01. This change imposes a 2 gpm limit on the increase of unidentified reactor coolant leak rate over a 24-hour period, establishes specific operability requirements for drywell sump flow measuring systems, and increases the frequency of Reactor Coolant System (RCS) leakage checks. This proposed change provides more stringent criteria for the early detection of unidentified leakage within primary containment. This additional restriction will enhance the ability to detect leaks in the reactor coolant pressure boundary, thereby reducing the potential for a significant failure of the pressure boundary. Additional requirements regarding the drywell sump flow measuring systems will provide added assurance that the sumps will always be available for the early detection of unacceptable leakage during plant operations. This change incorporates additional restrictions into the plant Technical Specifications and does not involve the modification or addition of any plant hardware, nor does it involve a change in those plant settings that affect plant operation responses. The District concludes that this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The second proposed change addresses the NRC position on inservice inspection methods and personnel, delineated in Generic Letter 88-01. This change involves the addition of a statement that commits the station to conducting the inservice inspection program in accordance with the guidance of Generic Letter 88-01, in regard to schedule, methods, personnel, and sample expansion. This change incorporates additional restrictions into the plant Technical Specifications and does not result in any plant modifications or change in plant hardware. The augmented inservice inspection program, for piping identified in Generic Letter 88-01, does not affect plant operations. However, adoption of this augmented inservice inspection program should provide added assurance that piping, susceptible to Intergranular Stress Corrosion Cracking, will maintain integrity throughout all modes of plant operation. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The third proposed change involves the replacement of various terms (system names) used to refer to the drywell air sampling system and the sump flow measuring systems with the terms "drywell air sampling system" and "sump flow measuring systems", respectively. The purpose of this change is to utilize system names that are consistent with those used in other parts of the Technical Specifications and the applicable implementing surveillance procedures. This proposed change is administrative in nature and does not involve a change in plant operations, plant modification, or a change in plant hardware. Therefore, the proposed change will 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?

The first proposed change addresses the NRC position on leak detection, delineated in Generic Letter 88-01, by establishing new requirements for restricting unidentified leak rate increases, increasing the surveillance frequency for RCS leakage, and establishing specific operability requirements for the drywell sump flow measuring systems. Cooper Nuclear Station (CNS) is analyzed for large, unisolatable leaks in primary containment and leakage is carefully monitored to reduce the probability of this occurring. This proposed change provides additional restrictions on operation with increasing leakage or inoperable monitoring equipment. Since this change does not result in a change to the design, operation, maintenance, or testing of the plant, a new mode of operation or failure is not created. Therefore, the proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

The second proposed change addresses the NRC position on inservice inspection methods and personnel, delineated in Generic Letter 88-01. This change adds a statement that requires piping, identified in Generic Letter 88-01, to undergo inservice inspection in accordance with NRC

guidelines. This change does not result in the addition or modification of any structure, system, or component, and does not introduce or change any mode of plant operation. Therefore, the District concludes that the proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

The third proposed change involves the replacement of various terms (system names) used to refer to the drywell air sampling system and the sump flow measuring systems in order to utilize system names that are consistent with those used in other parts of the Technical Specifications and the applicable implementing surveillance procedures. This proposed change is administrative in nature and does not introduce a change in the way Technical Specifications are interpreted or implemented. This change does not result in the addition, deletion, or modification of any structure, system, or component, and does not introduce or change any mode of plant operation. Therefore, the District concludes that the proposed change does 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?

The first proposed change addresses the NRC position on leak detection, delineated in Generic Letter 88-01. This proposed change provides additional restrictions to the rate of leakage increase allowed to the primary containment from unidentified sources, along with additional testing frequency requirements. These additional requirements enhance the ability for early detection of small leaks in the reactor coolant pressure boundary, thereby reducing the potential for significant failure of the pressure boundary. This change also includes the establishment of specific operability requirements for the drywell sump flow measuring system. This change will provide additional assurance that the sumps are available for the monitoring of RCS leakage. There are no changes to the plant hardware and no changes to plant safety setpoint settings resulting from this change. Therefore, this proposed change does not create a significant reduction in the margin of safety.

The second proposed change addresses the NRC position on inservice inspection methods and personnel, delineated in Generic Letter 88-01. This proposed change involves the inclusion of piping, identified in Generic Letter 88-01, into the CNS in-service inspection program per the guidance provided in the Generic Letter. This proposed change incorporates additional restrictions into the plant Technical Specifications and there are no modifications to plant hardware or changes to the plant safety setpoint settings. Therefore, this proposed change does not create a significant reduction in the margin of safety.

The third proposed change involves the replacement of various system names used to refer to the drywell air sampling system and the sump flow measuring systems. This proposed change is administrative in nature. It involves no hardware changes, plant modifications, or changes in plant operations. There are no changes to the plant safety setpoint settings. Therefore, 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: George T. Hubbard, Jr. (acting)

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: April 3, 1992, as supplemented January 12, 21, and 22, 1993

Description of amendment request: The amendment would revise the Surveillance Requirements (SRs) in the Technical Specifications (TS) for the Standby Liquid Control (SLC) system to substitute the pertinent requirements from the draft improved Standard TS provided in NUREG-1433.

The initial information supporting a finding of no significant hazards consideration was provided in the licensee's original application dated April 3, 1992, and confirmed in the licensee's January 12, 1993, submittal. The verification of SLC system operability focuses on maintaining or recovering the required temperature of the sodium pentaborate solution, and not on the means of achieving the solution temperature required to prevent precipitation.

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 revised proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised proposed SR to verify that the SLC system pump suction line is unblocked does not delineate a specific flow path. The current TS SR specified flow path from the SLC system storage tank to the test tank creates a large amount of liquid waste requiring special handling as a result of the post-test pipe flushing. An alternative testing method would be to pump solution from the storage tank to a test drain. This would reduce the amount of piping and equipment subjected to the flow of the sodium pentaborate solution and the subsequent required flushing. Accordingly, the result of performing the proposed SR would be equivalent to performing the current SR: affected heat traced piping would continue to be verified unblocked. The revised proposed SR deletes the prescribed method specified in the current and originally proposed TS, and thereby allows flexibility in the methods employed to perform this SR verification. The revised proposed SR also includes a clarification of the period during which this SR is required to be performed if the piping temperature drops below the low temperature limit (i.e., 70°F).

The revised proposed SR changes include deletion of the required demonstration of SLC system storage tank heater operability. This proposed change is based upon the ultimate objective of determining SLC system operability as a function of the temperature of the sodium pentaborate solution in the storage tank, which the TS will continue to require to be checked daily, and not on the method of achieving this verification. Specifically, the storage tank heaters are the "A" heater, a 10KW cycling heater (i.e., controlling solution temperature between 75°F and 85°F), and the "B" heater, a 40KW manually operated heater used primarily during solution mixing activities. The storage tank is located within heated spaces of the Reactor Enclosure that are normally maintained at or above the "A" heater low temperature activation setpoint of 75°F. Furthermore, low storage tank solution temperature (i.e., 70°F) is alarmed in the Main Control Room.

In addition, the revised proposed SR includes clarification of the period within which the verification of solution concentration is required to be performed after water or boron is added to the storage tank, or if the solution temperature drops below 70°F.

This clarification is based on the recognition of realistic time limits to perform actions to preclude precipitation of the sodium pentaborate. Based on the above discussion, our previous conclusion that the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated remains unchanged.

2. The revised proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revised proposed changes tot he SLC system SRs do not add or delete any equipment, and do not involve any systems or equipment that would create an accident. Therefore, our previous conclusion that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated remains unchanged.

3. The revised proposed TS changes do not involve a significant reduction in [a] margin of safety.

The revised proposed changes to the SLC system SRs do not involve physical changes

to the system, and continue to provide an equivalent level of assurance that the SLC system will be capable of performing its safety function. Therefore, our previous conclusion that the proposed changes do not reduce the margin of safety remains unchanged.

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: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit No 3, York County, Pennsylvania

Date of application for amendment: January 28, 1993

Description of amendment request: The licensee proposes to modify Section 1.1.A of the Peach Bottom Atomic Power Station, Unit 3 Technical Specifications. The proposed change would revise the safety limit minimum critical power ratio (MCPR) for two recirculation loop and single recirculation loop operation to 1.07 and 1.08 respectively. The change is requested to accommodate installation and use of a new fuel type, GE-11 fuel, during the Cycle 10 operation. Unit 3, Cycle 10 is expected to begin in November of 1993.

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:

PECo [Philadelphia Electric Company] proposes that the changes to the MCPR Safety Limits do not involve significant hazards considerations for the following reasons.

i) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. Because the MCPR Safety Limits are operational thresholds analytically selected using proven methods, they cannot, themselves, initiate an accident. The probability of occurrence of transients is determined by the frequency of operator errors and equipment failures, not by the adequacy of the MCPR Safety Limits selected. Because the proposed MCPR safety limits have been selected such that no fuel damage is calculated to occur during the most severe moderate frequency transient events, they will ensure that the consequences of these events are not increased. The response of the plant to transients will be within the bounds of the discussion in Chapter 14 and Appendix G of the Updated Final Safety Analysis Report since the proposed MCPR Safety Limits will accomplish the same objectives as the previous limits.

ii) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed MCPR Safety Limits have been selected such that the design basis is satisfied. The MCPR Safety Limits are operational thresholds analytically selected using proven methods; therefore, they cannot, themselves, initiate an accident. An improperly selected limit could result in fuel damage, which is a consequence of previously evaluated accidents. Thus, no new or different type of accident could be created by revising the limits.

iii) The proposed changes do not involve a significant reduction in a margin of safety because the proposed MCPR Safety Limits have been selected such that the design basis is satisfied and such that the conservatism described in the Bases for the Fuel Cladding Integrity Safety Limit TS are maintained. Thus, margins of safety with the proposed MCPR Safety Limits are the same as with the previous limits.

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: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 5, 1993

Description of amendment request: The licensee has requested a change in the Technical Specification fuel storage criticality criteria. The development of new fuel designs has resulted in fuel bundles with higher average enrichment and more burnable poisons than the design used as the basis for the existing TS requirement. The existing and the proposed TS criteria are used to ensure compliance with the requirement to have fuel storage k-eff less than or equal to 0.95. The licensee proposes to replace the existing TS 5.5.D that "The average fuel assembly loading shall not exceed 17.3 grams U-235 per axial centimeter of total active fuel height of the assembly" with a requirement that states "The spent fuel storage racks are designed and shall be maintained with fuel assemblies having a maximum k-infinity of 1.362 in the nominal reactor core configuration at cold conditions." The licensee contends the proposed criteria is more appropriate to new fuel designs.

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:

Licensee proposes that this application does not involve a significant hazards consideration for the following reasons:

i) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change replaces the method of assuring the compliance with the storage reactivity criterion. The existing fuel enrichment criteria is converted to a k-infinity criteria by computing the in-core k-infinity of the exact same lattice type used by the rack supplier in the original fuel storage criticality analysis. Since the proposed change does not affect operations, equipment, or any safety related activity, current accident precursors are unaffected. Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

ii) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not make any physical changes to the plant or changes to operating procedures. Therefore, implementation of the proposed change will not affect the design function or configuration of any component or introduce any new operating scenarios or failure modes or accident initiation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

iii) The proposed change does not involve a significant reduction in a margin of safety.

Replacing the method by which the fuel storage criticality is assured does not affect any safety related equipment activity or equipment. Therefore, the proposed change does not reduce any 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: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

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 requests: October 14, 1992

Description of amendment requests: The licensee proposes to revise Technical Specification (TS) 3/4.7.5, "Control Room Emergency Air Cleanup System," and associated Bases, to delete requirements for duct heaters and diverting valves, and to incorporate modifications in the Action statement, Survellance Requirements (SR), and 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. 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:

1. The proposed TS change will not result in a significant increase in the probability or consequences of any accident previously evaluated. The proposed TS change clarifies the ACTION statements when each unit is in a different operational MODE, and will not decrease the ability of the control room emergency air cleanup system (CREACUS) to perform its intended function of protecting the control room operators from a postulated uncontrolled release of radioactivity or toxic gas. The proposed TS change also modifies the surveillance requirements for the CREACUS, including deleting duct heaters that are not required and removing reference to diverting valves that do not exist in the system. The licensee states that the duct heaters are not needed to maintain the relative humidity below the required level, and the reliability and performance of the CREACUS will not be affected by the proposed changes in the surveillance requirements. The staff concludes that the licensee's analysis of the impact of these modifications to the CREACUS surveillance requirements appears to satisfy this standard of 10 CFR 50.92(c)

2. The proposed TS change will not create the possibility of a new or different kind of accident from any previously evaluated. The CREACUS is utilized to protect the control room operators from certain accident scenarios, and its operation will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The operation of the facility in accordance with this proposed TS change will not result in a significant reduction in a margin of safety. The discussion in Item 1 above contains the staff's evaluation of the licensee basis for concluding that the reliability and performance will not be adversely affected by the proposed TS change. This conclusion also means that no significant decrease in any margin of safety will result from this proposed TS change.

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: Theodore R. Quay

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 requests: December 30, 1992

Description of amendment requests: The licensee proposes to revise Technical Specification (TS) 3/4.3.2, "Engineered Safety Feature Actuation System Instrumentation," and TS 3/4.3.3, "Radiation Monitoring Instrumentation." This amendment request, identified as Proposed Change Number 405, would eliminate the TS requirements and ESFAS circuitry for the Control Room Isolation System (CRIS) particulate/iodine channel. The licensee has reviewed the design basis for the CRIS particulate/iodine channel and determined that it is not necessary for this channel to perform an Engineered Safety Feature Actuation System (ESFAS) function.

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. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would eliminate the ESFAS technical specification requirements and ESFAS circuitry of the CRIS particulate/iodine radmonitor channel. The function of the particulate/iodine channel is to detect airborne radioactivity entering the control room normal ventilation supply and initiate a CRIS signal. The CRIS signal realigns the ventilation system to a configuration that is capable of maintaining a suitable control room environment following a Design Basis Accident. Since the CRIS particulate/iodine channels are only used following an accident, the probability of occurrence of an accident previously evaluated would not be affected by the proposed change.

CRIS instrumentation is credited in the [Updated Final Safety Analysis Report] UFSAR for two design basis events: a steam generator tube rupture and a [Fuel Handling Accident] FHA inside containment. Eliminating the particulate/iodine channel would not alter the ESFAS function of the CRIS signal. The response time of the CRIS particulate/iodine channel has been evaluated in comparison with the CRIS gaseous channels. The gaseous channels would respond to initiate a CRIS signal faster than the particulate/iodine channels.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change would eliminate ESFAS technical specification requirements and ESFAS circuitry of CRIS instrumentation used solely for the purpose of protecting the control room during a design basis accident. Eliminating the particulate/iodine channel would not alter the ESFAS function of the CRIS system. With the exception of eliminating these two channels, the proposed change would not alter the design of the interface between CRIS instrumentation and existing plant equipment. CRIS functions would continue to be performed by the redundant gaseous channels of the airborne radmonitors. Operation of the facility in accordance with this proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change would eliminate ESFAS technical specification requirements and ESFAS circuitry of the CRIS particulate/iodine channel. During all credible accidents which require CRIS actuation, the gaseous radmonitor channels would initiate the required safety function. Since the proposed change would not alter the response of the gaseous channels, operation of the facility in accordance with the proposed change would not involve a significant reduction in a margin of safety.

CRIS instrumentation is credited in the UFSAR for two design basis events: a steam generator tube rupture and a FHA inside containment. Eliminating the particulate/iodine channels would not alter the ESFAS function of the CRIS signal. The response time of the particulate/iodine channel has been evaluated in comparison with the CRIS gaseous channel. The gaseous channels would respond to initiate a CRIS signal faster than the particulate/iodine channels. Since for both design basis events, the response of the redundant gaseous channels would initiate a CRIS signal faster than would the particulate/iodine channel, operation of the facility in accordance with this proposed change would 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 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: Theodore R. Quay

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 requests: December 30, 1992

Description of amendment requests: The licensee proposes to revise Technical Specification (TS) 3.3.3.1, "RADIATION MONITORING." This amendment request, identified as Proposed Change Number 416, would increase the required number of plant vent stack wide range noble gas radiation monitors from 1 to 2 when either Unit 2 or 3 is in Mode 1, 2, or 3. When either Unit 2 or 3 is in Mode 4 and the other unit is in Mode 4, 5, or 6, either the plant vent stack monitor (2/3RT-7808) or both wide range gas monitors (2RT-7865-1 and 3RT-7865-1) will be required. Editorial clarifications are also made.

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. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This proposed change increases the number of wide range noble gas plant vent stack radiation monitors from one to two. The proposed TS will require that whenever Unit 2 or Unit 3 is in Mode 1, 2, or 3, both plant vent stack effluent pathways will be continuously monitored. In Mode 4 either the normal plant vent stack monitor (2/3RT-7808) or both 2RT-7865-1 and 3RT-7865-1 will be required. This proposed change does not reduce the requirements for any radiation monitor credited in the UFSAR for mitigation of the consequences of any previously evaluated accident. Therefore, this proposed change will not increase the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed change increases radiation monitoring requirements using existing qualified equipment. This proposed change neither adds new equipment nor changes the configuration or operation of the plant. Therefore, no new or different kind of accident is created from any previously evaluated.

3. Will operation of the facility in accordance with this proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This proposed change increases the operability requirements for wide range noble gas plant vent stack radiation monitors. This proposed change is limited to the requirements of [Plant Vent Stack] PVS radiation monitoring with 2RT-7865-1 and 3RT-7865-1 which are not identified with any margin of safety. Therefore, this proposed change will not significantly reduce any 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 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: Theodore R. Quay

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 requests: December 30, 1992

Description of amendment requests: The licensee proposes to include a new Technical Specification (TS) 3/4.7.3.1, "Component Cooling Water Safety Related Makeup System," and its associated Bases, in the San Onofre Units 2 and 3 Technical Specifications. This TS amendment request, identified as Proposed Change Number 418, is being submitted to support the installation (during the Units 2 and 3 Cycle 7 refueling outages) of a safety related Seismic Category I source of emergency makeup water for the Component Cooling Water (CCW) 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. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No

The CCW Safety Related Makeup System provides an assured water supply to the CCW in case of a Design Basis Event. As such, the proposed Technical Specifications describe a new system which will ensure that the CCW remains OPERABLE following a Design Basis Event. Therefore, this proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No

The changes proposed herein improve the reliability of the CCW system by providing it with a safety related makeup. Therefore, this proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

Operation of the facility in accordance with the proposed change will not be altered as a result of the proposed change. The

purpose of this change is to ensure the CCW will continue to perform its functions in case of a [Design Basis Event] [DBE] without reliance on the non-Seismic I Nuclear Service Water System. Therefore, the 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 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: Theodore R. Quay

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 requests: December 31, 1992

Description of amendment requests: The licensee proposes to revise Technical Specification (TS) 3.2.1, "LINEAR HEAT RATE," and TS 3.2.4, "DNBR MARGIN," and the corresponding Bases. This amendment request, identified as Proposed Change Number 325, increases the ACTION time from 1 hour to 4 hours when the Core Operating Limit Supervisory System (COLSS) is out of service. During the 4-hour ACTION period, new Surveillance Requirements will verify every 15 minutes that no adverse trend in departure from nucleate boiling ratio (DNBR) margin or linear heat rate (LHR) will occur. In addition, new power reduction requirements are proposed when the Limiting Conditions for Operability cannot be met from "HOT STANDBY" to "less than or equal to 20% Rated Thermal Power."

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. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This proposed change distinguishes between the action requirements applicable when COLSS is either in service or out of service. If COLSS is in service the actions and time requirements remain unchanged. When COLSS is not available the action time is increased from 1 hour to 4 hours. The purpose of these TS changes is to provide a reasonable opportunity for appropriate corrective actions when the COLSS becomes inoperable.

The TS [Limiting Conditions for Operation] LCOs for DNBR margin and LHR are more restrictive when operating without the COLSS due to [Core Protection Calculators] CPC uncertainties and the overpower margin reserved to ensure that specified acceptable fuel design limits are not exceeded in the event of anticipated operational occurrences. Consequently, when COLSS becomes inoperable the existing DNBR margin limits based on CPC information can only be satisfied by either a power reduction or by restoring the COLSS to service. By itself, a loss of COLSS or returning the COLSS to service does not affect plant operation and does not affect the actual DNBR or the LHR. In addition, a loss of the COLSS does not immediately mean that the actual core power should be changed. Therefore, during normal operation within the COLSS [Power Operating Limits] POLs, if there are no indications that the actual DNBR margin or LHR has degraded, the required overpower margin discussed in chapter 15 of the [Updated Final Safety Analysis Report] UFSAR will continue to be maintained.

When either TS 3.2.1 or TS 3.2.4 is not satisfied compensatory actions will provide additional assurance that the actual DNBR margin and LHR do not exceed the safety limits stated in the UFSAR. The new [surveillance requirements] SR will ensure that DNBR margin and LHR are monitored every 15 minutes and appropriate action is taken if an adverse trend is noted when COLSS is out of service and the LHR and DNBR TS LCOs are not met.

The primary consideration in extending the COLSS out of service time limit is the remote possibility of a slow, undetectable transient that degrades the DNBR margin or LHR within the 4 hour action time and is then followed by an anticipated operational occurrence or accident. The plant parameters monitored by COLSS which could affect DNBR margin and LHR include [Reactor Coolant System] RCS flow rate as determined from reactor coolant pump shaft speed, axial power distribution, cold leg temperature, reactor core power, RCS pressure, and azimuthal tilt. Of these parameters, the CPC's directly incorporate measured values for reactor core power, RCS flow rate as determined from reactor coolant pump shaft speed, RCS pressure, and cold leg temperature into the calculations of DNBR and LHR. Therefore, any degradation of conditions with respect to these parameters is expected to be evident in the equivalent CPC margins.

San Onofre is stable with respect to azimuthal power tilt within any 4 hour time period. The only credible events affecting azimuthal tilt are an inadvertent drop or misalignment of a Control Element Assembly (CEA). The probability of an undetected dropped or misaligned CEA is remote within any four hour time period and beyond the basis of LCO monitoring. In addition, a CEA calculator indicating light and alarm will alert operators that corrective action is required if this situation were to occur. Thus, during the proposed 4 hour action statement any degradation of azimuthal tilt is unlikely and would be quickly and positively identified.

Axial xenon oscillations are a normal consequence of the San Onofre Unit 2 and 3 core designs, particularly near the end of a fuel cycle. The resultant axial core power fluctuations are strictly controlled to insure efficient fuel burnup. As a result, axial power shape is strictly maintained by existing procedures well within the limits assumed in the safety analysis. Typically, axial shape control will maintain the [Axial Shape Index] ASI within 0.05 ASI units of the Equilibrium Shape Index (ESI).

Typically, one full xenon oscillation will take approximately 26 hours. Since operating procedures will be revised to require CPC calculated LHR and DNBR to be monitored every 15 minutes, any significant change in ASI will be identified. Therefore, due to the attention given the axial power distribution when COLSS is in service and the increased LHR and DNBR monitoring when COLSS is not in service, it is unlikely that a change in ASI during the 4 hour ACTION period of steady plant operation would either be undetected or lead to a condition outside the range of initial conditions assumed in the safety analysis.

This proposed change does not modify either the LHR or DNBR Limiting Conditions for Operation (LCOs). The core power distribution during all phases of normal operation and anticipated operational occurrences will remain bounded by the initial conditions assumed in chapter 15 of the safety analysis. The COLSS calculated POLs and the CPC based LHR and DNBR operating limits will remain unchanged. Therefore, this proposed change will not significantly increase the probability or consequences of an accident previously evaluated.

This proposed change increases the core power limit if LHR and DNBR limits are not restored within the applicable action time, from "HOT STANDBY" to "less than or equal to 20% of Rated Thermal Power (RTP). This administrative change provides consistency with the existing TS applicability statements. The increased power level allows in-core and ex-core neutron detectors to provide meaningful data for COLSS trouble shooting and operability determination without decreasing any safety margin.

Therefore, this change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed change is limited to administrative limits, does not involve any physical change to plant systems, and the

COLSS and CPC software is not altered. This change will not affect any safety-related equipment used in the mitigation of anticipated operational occurrences or design basis accidents. The only significant change resulting from this amendment will be to the [Operating Instructions] OIs used when COLSS is out of service. These OI changes will be reviewed and implemented in accordance with 10 CFR 50.59 and TS Administrative Controls. The DNBR and LHR LCOs are not affected by these changes. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed amendment involve a significant reduction in a margin of safety?

Response: No.

TS LCOs 3.2.1 and 3.2.4 ensure that operation of the reactor is within the range of conditions assumed in the Safety Analysis. When COLSS is unavailable, the new SR will monitor DNBR margin and LHR using the CPCs to ensure that the DNBR margin and LHR have not degraded and no anticipated operational occurrence or postulated accident will result in core conditions exceeding Specified Acceptable Fuel Design Limits or the maximum peak cladding temperature of 2200°F specified by 10 CFR 50.46. Therefore, the analysis as described in Chapter 15 of the UFSAR remains bounding. For these reasons, this change will not result in 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 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: Theodore R. Quay

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 amendment request: November 24, 1992

Description of amendment request: The proposed amendment would revised Technical Specification Section 15.3.10, "Control Rod and Power Distribution Limits." The first sentence of Specification 15.3.10.A.5 currently reads: "When the reactor is in the hot shutdown condition or during any approach to criticality, except for physics tests, the critical rod position shall not be lower than the insertion limit for zero power." The proposed amendment would change this sentence to read: "During any approach to criticality, except for physics tests, the critical rod position shall not be lower than the insertion limits for zero power."

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:

Operation of this facility under the proposed Technical Specification will not create a significant increase in the probability or consequences of an accident previously evaluated. This proposed change modifies Specification 15.3.10.A.5 by removing its applicability when the reactor is in hot shutdown. The intent of this section is to prevent the occurrence of a reactor criticality below the control rod insertion limits. Under the proposed amendments, the intent of this section will still be maintained because sufficient actions to ensure that a criticality only occurs above the control rod insertion limits are still required to be performed before a critical approach can be commenced. Additionally, the proposed changes will not minimize the existing controls for the hot shutdown mode of operation. Specification 15.3.10.A.3 adequately addresses the hot shutdown condition in its consideration of shutdown margin requirements. There is no physical change to the facility, its systems, or its operation. Thus, an increased probability or consequences of an accident previously evaluated cannot occur.

Operation of this facility under the proposed Technical Specification will not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed change modifies Specification 15.3.10.A.5 by removing its applicability when the reactor is in hot shutdown. The intent of this section is to prevent a reactor criticality below the control rod insertion limits. Under the proposed amendments, the intent of this section will be maintained. Sufficient actions to ensure that criticality only occurs above the control rod insertion limits are still required before a critical approach can be commenced. Additionally, the proposed changes will not minimize the existing controls for the hot shutdown mode operation. Specification 15.3.10.A.3 adequately addresses the hot shutdown condition in its consideration of shutdown margin requirements. There is no physical change to the facility, its systems, or its operation. Thus, a new or different kind of accident cannot occur.

Operation of this facility under the proposed Technical Specification will not create a significant reduction in a margin of safety. This proposed change modifies Specification 15.3.10.A.5 by removing its applicability when the reactor is in hot shutdown. The intent of this section is to prevent a reactor criticality below the control rod insertion limits. Under the proposed amendments, the intent of this section will be maintained. Sufficient actions to ensure that a criticality only occurs above the control rod insertion limits are still required to be performed before a critical approach can be commenced. Additionally, the proposed changes will not minimize the existing controls for the hot shutdown mode of operation. Specification 15.3.10.A.3 adequately addresses the hot shutdown condition in its consideration of shutdown margin requirements.

There is no physical change to the facility, its systems, or its operation. Thus, a significant reduction in a margin of safety cannot occur.

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: 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 amendment request: January 14, 1993

Description of amendment request: The proposed amendment would revise Technical Specification 15.3.1.E, "Maximum Reactor Coolant Oxygen and Chloride and Fluoride Concentration for Power Operation." Item 2 under this specification limits the concentration of chloride and fluoride each to 0.15 ppm. The amendment would separate this into two parts, one for chloride, the other for fluoride. The limits would not be changed.

The amendment would also revise the action statement by changing the times in which actions must be taken. The current action statement requires action only when oxygen and either chloride or fluoride exceed specified limits. As revised, action would be taken when any one of the three parameters exceeds its specified limit. Under the existing specification, if normal operation specifications are not achieved within 24 hours, the reactor is to be brought to a hot shutdown condition within an unspecified time period. The amendment would specify that this be done within 8 hours. The current specification continues with a

requirement that, if the system is not brought to within specifications within an additional 24 hours, the system is to be brought to a cold shutdown condition in an unspecified time period. The amendment would specify that this period to achieve cold shutdown be 12 hours.

The specification is reworded to tie all actions to the time of discovery of the out-of-specification condition.

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:

Criterion 1

Operation of the Point Beach Nuclear Plant in accordance with the proposed license amendment does not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment assures that timely corrective action is taken for an out-of-specification reactor coolant chemistry condition. Control of oxygen, chloride, and fluoride contaminants helps insure the long-term integrity of the reactor coolant pressure boundary, fuel clad, and reactor vessel internals. Degradation caused by an out-of-specification chemistry condition is time-dependent and therefore does not present an immediate safety concern. Any degradation will be detected by existing inspection programs and procedures. It is appropriate to allow a reasonable, though limited period of time, in which to correct the condition while maintaining the plant operating. Fuel damage and loss of coolant accidents, including a steam generator tube rupture, are the principal accidents involving reactor coolant system materials analyzed in the updated Final Safety Analysis Report (FSAR). Reactor coolant chemistry is not analyzed as a contributing factor to these events. Therefore, the probability or consequences of any accident previously evaluated will not significantly increase.

Criterion 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 does not result in or from a physical change to the facility or a significant change in its operation. Corrective action will be taken expeditiously to correct any out-of-specification chemistry condition. Therefore, operation of the facility in accordance with this amendment cannot result in a new or different type of accident than any presently analyzed.

Criterion 3

The proposed amendment does not involve a significant reduction in a margin of safety.

Controlling oxygen, chlorides, and fluorides within specified limits insures the functional integrity of the reactor coolant system material under all operating conditions. Degradation due to out-of-specification chemistry conditions is a slow, time-dependent process. The out-of-specification conditions do not present an immediate concern as to the integrity of the reactor coolant system materials and the fuel cladding. A limited period of time to correct the condition, 24 hours, will not cause 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: 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, Proposed No Significant Hazards Consideration Determination, and Opportunity for a 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.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: January 15, 1993, as supplemented January 21, 1993

Description of amendment request: The amendment would revise the Technical Specifications, Section 4.7.10.e, by extending the surveillance requirement frequency for the snubber functional tests by allowing a one-time extension to the current 18-month surveillance, plus the additional 25 percent allowed by Technical Specification 4.0.2.

Date of publication of individual notice in **Federal Register:** February 5, 1993 (58 FR 7265).

Expiration date of individual notice: March 8, 1993

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Georgia Power Company, et al., Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: February 2, 1993 (This amendment request supersedes previous August 31, 1992, request as noticed in the **Federal Register** September 30, 1992, 57 FR 45084)

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.8.1.1.2.h.7 and its associated footnote to remove the requirement to have the diesel generators perform the LOOP/ESFAS test within 5 minutes after completing the 24-hour test and substitute the requirement to start the diesel generator in accordance with TS 4.8.1.1.2.a.4 within 5 minutes after the 24-hour test.

Date of publication of individual notice in **Federal Register:** February 18, 1993 (58 FR 8999)

Expiration date of individual notice: March 22, 1993

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, 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.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: October 30, 1991

Brief description of amendment: The amendment revised Technical Specification 3.3.2-2 by adding new isolation signals for the Reactor Water Cleanup (RWCU) system and by revising the existing setpoint for the delta-flow timer isolation signal. The new signals will initiate an RWCU system isolation based on high temperature or high delta-temperature in containment rooms where the "cold" portion of the RWCU piping is located. The RWCU delta-flow timer setpoint was extended from 45 seconds to 10 minutes.

Date of issuance: February 8, 1993

Effective date: February 8, 1993

Amendment No. 46

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 11, 1991 (56 FR 64649). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 8, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: April 20, 1992

Brief description of amendment: The amendment removes certain fire protection related items from Oyster Creek Nuclear Generating Station Technical Specifications and relocates them in the Fire Protection Program to the Updated Final Safety Analysis Report. This amendment was requested in accordance with the guidance provided in Generic Letter 86-10 and 88-12.

Date of issuance: February 18, 1993

Effective date: February 18, 1993

Amendment No.: 161

Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 13, 1992 (57 FR 20511) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 18, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of applications for amendment: August 9, 1991, and October 29, 1991

Brief description of amendment: The amendment revises the Technical Specifications Bases addressing the minimum borated water storage volumes to ensure adequate shutdown margin exist with respect to the loss of coolant accident (LOCA) linear heat rate allowable limits. Technical Specifications Figure 3.5-2M, "LOCA Limited Maximum Allowable Linear Heat Rate," is revised to reflect the Babcock & Wilcox reevaluations of generic linear heat rate limits. In accordance with the intent of NRC Generic Letter 88-16, this figure is removed from the TMI-1 Technical Specifications and incorporated into the TMI-1 Core Operating Limits Report.

Date of issuance: February 11, 1993

Effective date: February 11, 1993

Amendment No.: 168

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notices in **Federal Register:** August 5, 1992 (57 FR 34583) and December 9, 1992 (57 FR 58246) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 11, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: June 24, 1992

Brief description of amendment: The amendment revises the requirements for the number of licensed Senior Reactor Operators required to be stationed for Refueling Operations, in accordance with 10 CFR 50.54.

Date of issuance: February 11, 1993

Effective date: February 11, 1993

Amendment No.: 169

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 14, 1992 (57 FR 47138) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 11, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: August 25, 1992

Brief description of amendment: The amendment change revises the Technical Specifications to allow receipt, storage, and transfer of reactor fuel enriched to as high as 5.0 weight percent with U-235.

Date of issuance: February 17, 1993

Effective date: February 17, 1993

Amendment No.: 170

Facility Operating License No. DPR-50. Amendment revised Technical Specifications.

Date of initial notice in **Federal Register:** October 14, 1993 (57 FR 47139) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 17, 1993. No significant

hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: July 27, 1992

Brief description of amendment: The amendment revises the Technical Specifications for reactor vessel water level as follows:

• Provides in Section 3.3.3.6 separate actions when either one or two channels of reactor vessel water level monitoring are not operable.

• Adds a definition to Table 3.3-10 of an operable channel.

• Clarifies Table 4.3-7 that an electronic calibration from the Inadequate Core Cooling cabinets is the appropriate surveillance for the reactor vessel water level instrumentation.

Date of issuance: February 18, 1993

Effective date: February 18, 1993

Amendment No.: 76

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992 (57 FR 40217) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 18, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendments request: January 21, 1992

Description of amendments request: The amendments revise surveillance tests intervals for engineered safety feature systems pumps and valves to be consistent with the Standard Technical Specifications.

Date of issuance: February 5, 1993

Effective date: February 5, 1993

Amendment Nos.: 104 and 97

Facility Operating License Nos. DPR-42 and DPR-60. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11112) and January 6, 1993 (58 FR 597) for clarification. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 5, 1993. 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.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: September 29, 1992

Brief description of amendment: The amendment revised the Technical Specifications to incorporate the following changes:

(1) The frequency of pressurizer safety valve set pressure checks (specified in Table 4.1-3) was changed to accommodate operation on a 24-month cycle.

(2) The frequency of pressurizer safety valve position indicator calibration and testing (specified in Table 4.1-1) was changed to accommodate operation on a 24-month cycle.

(3) The frequency of the PORV and PORV block valve operability testing (specified in Table 4.1-3) was changed to accommodate operation on a 24-month cycle.

(4) The frequency of the PORV position indicator testing for both the limit switch and acoustic monitor and the PORV position indicator calibration for the acoustic monitor (specified in Table 4.1-1) was changed to accommodate operation on a 24-month cycle. In addition, the limit switch calibration requirement was deleted.

(5) The frequency of the reactor vessel head vent operability check (specified in Table 4.1-3) was changed to accommodate operation on a 24-month cycle.

These changes followed the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle."

Date of issuance: February 9, 1993

Effective date: February 9, 1993

Amendment No.: 127

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 28, 1992 (57 FR 48825) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Texas Utilities Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit No. 1, Somervell County, Texas

Date of amendment requests: April 2, 1991, and August 31, 1992. The August 31, 1992 application was supplemented by letters dated October 29, 1992, and December 14, 1992.

Brief description of amendment: This amendment modifies the technical specifications by: (1) adding action requirements for the engineered safety features actuation system instrumentation loss of power function, (2) changing the Unit 1 TS to the Combined TS for Units 1 and 2, (3) revising the TS for the station service water system to reflect two operational units, (4) removing the option of performing a containment reduced pressure test in lieu of a containment peak pressure test during preoperational, periodic and supplemental tests, (5) revising the safety limits and limiting conditions for operation related to departure from nucleate boiling ratio to make them applicable to both Unit 1 and 2, (6) changing the pressure/temperature limits for both Unit 1 and 2 and making the new limits applicable for 16 effective full power years, (7) revising the heatup/cooldown curves and power operated relief valve setpoints for low temperature overpressure protection, and (8) adding a TS and associated bases for the feedwater isolation valve pressure/temperature limit.

Date of issuance: January 29, 1993

Effective date: January 29, 1993, to be implemented upon issuance of low power license for Unit 2.

Amendment No.: Amendment No. 14

Facility Operating License No. NPF-87: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992, December 21, 1992, and December 23, 1992 (57 FR 555595, 57 FR 55596, 57 FR 55597, 57 FR 60544 and 57 FR 61121). No significant hazards consideration comments received: No

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019

Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By April 2, 1993, 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. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 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) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of application for amendment: February 2, 1993, as supplemented by letter dated February 8, 1993

Brief description of amendment: The amendment changed the Technical Specifications Section 3.6.D.2 to allow operation with the pressure relief function of safety relief valves inoperable. The amendment is to remain in effect until the next outage of sufficient duration requiring a drywell entry to allow the licensee to repair the valve. The amendment shall expire no later than February 28, 1994.

Date of issuance: February 12, 1993

Effective date: As of its date of issuance and is to remain in effect until the next outage of sufficient duration requiring a drywell entry. The amendment shall expire no later than February 28, 1994.

Amendment No.: 172

Facility Operating License No. DPR-44: This amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes. The NRC published a public notice of the proposed amendment, issued a proposed finding of no significant hazards consideration and requested that any comments on the proposed no significant hazards consideration be provided to the staff by the close of business on February 12, 1993. The notice was published in the York Daily Record, York Dispatch, Lancaster New Era and the Lancaster Intelligencer-Journal on February 5, 1993. The notice was also published in the Cecil Whig on February 9, 1993, and in the Bel Air Aegis on February 10, 1993. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Pennsylvania and final no significant hazards consideration determination are contained in a Safety Evaluation dated February 12, 1993.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Project Director: Charles L. Miller

Dated at Rockville, Maryland, this 24th day of February 1993.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 93-4749 Filed 3-2-93; 8:45 am]

BILLING CODE 7590-01-F

Documents Containing Reporting or Recordkeeping Requirements Submitted for Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR part 26, "Fitness for Duty Programs".

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required to report: Nuclear power plant licensees.

6. An estimate of the number of responses annually: a. 148 semi-annual reports (an average of 40 hours per response).

b. 74 telephonic event reports (an average of 15 minutes per response).

c. 44,000 written statements from applicants for unescorted access authorization to protected areas (an average of 30 seconds per response).

7. An estimate of the total number of hours needed annually to complete the requirement: 80,692 (7,210 hours of reporting burden and 73, 482 hours of recordkeeping burden).

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: 10 CFR part 26 of NRC's regulations, "Fitness for Duty Programs," requires operators of nuclear power plants to implement fitness-for-duty programs to assure that personnel are not under the influence of any substance or mentally or physically impaired, to retain certain records associated with the management of

these programs, and to provide reports concerning significant events. Compliance with these requirements is mandatory for licensees subject to 10 CFR part 26.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0146), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 24th day of February 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–4869 Filed 3–2–93; 8:45 am]

BILLING CODE 7590–01–M

Installation and Operation of Hardened Vents From Suppression Pool Airspaces of Boiling Water Reactors (BWRs) With Mark I Containments

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance of Generic Environmental Assessment (GEA) and Finding of No significant Impact (FONSI).

SUMMARY: This GEA is being issued to inform the public of the NRC's assessment of the installation of hardened wetwell venting capability. The installation of the hardened wetwell vents in Mark I containment plants will reduce the environmental impact of severe accidents that challenge the Integrity of Mark I containments, will provide a significant improvement in safety, and will not otherwise significantly increase the environmental impacts. The installation of such vents was recommended by NRC in Generic Letter 89–16, dated September 1, 1989.

The incremental occupational radiation dose for the recommended operation of the hardened wetwell vent path is insignificant (unmeasurable) because the vent would be operated from the control room. The licensees should be able to keep the small radiation doses associated with installing the hardened wetwell vent path within the limits of 10 CFR part 20 and as low as is reasonably achievable. Furthermore, the non-radiological impacts of the vent path will also be insignificant.

Alternative Use of Resources

This action does not involve the use of significant resources beyond the existing resources used for piping and replacement parts at all nuclear plants.

Agencies and Persons Consulted

The NRC staff's evaluation is based on research performed by the Office of Nuclear Regulatory Research. No other agencies or persons were consulted.

EFFECTIVE DATE: 30 days after publication.

Public Comments

No public comments on the Draft Generic Environmental Assessment (55 FR 25916, June 25, 1990) were received. However, the NRC staff has made editorial changes to the text of the Generic Environmental Assessment. The editorial changes had no effect on the technical basis of the Generic Enviornmental Assessment.

FOR FURTHER INFORMATION CONTACT: Mohan C. Thadani, Division of Reactor Projects I/II, Telephone (301) 504–1476, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

Background

In SECY–87–297 (Reference 1), the NRC staff presented to the Commission its plan to evaluate generic severe accident vulnerabilities of containments. The staff's plan included a program for Containment Performance Improvement (CPI). This program was initiated to determine whether generic severe accident challenges to light water reactor (LWR) containments may exist that the NRC staff should assess to ascertain whether additional regulatory guidance or requirements for these containment features were warranted. The staff concluded that such assessments were needed because of the relatively large uncertainty in the ability of some LWR containments (that is, Mark I containments) to successfully survive some possible severe accident challenges as indicated in draft NUREG–1150 (Reference 2). The CPI program is intended to resolve hardware and procedural issues related to generic containment challenges. The staff presented its findings related to the Mark I CPI program to the Commission in SECY–89–017 (Reference 3), dated January 23, 1989. In one of these findings, the staff concluded that properly implemented venting can significantly mitigate potential accident risks.

The capability to vent has long been recognized as important in reducing risk at boiling water reactor (BWR) Mark I facilities. For accidents involving the loss of capability to remove long-term decay heat (TW), controlled venting at pressures close to the containment pressure limits can prevent (1) the long-term overpressurization and failure of the containment, (2) the failure of emergency core cooling system pumps from inadequate net-positive suction head, and (3) the failure of the automatic depressurization system (ADS) caused by the failure of ADS valves to operate.

A vent path from wetwells of the containments exists for some Mark I facilities. However, this vent path includes a ductwork system that has a low design pressure of only a few pounds per square inch. Venting under high-pressure conditions (as would be required for accidents involving high-pressure challenges, either before or after core melt) could cause this ductwork to fail, releasing the containment atmosphere into the reactor building (with eventual release to the environment) and potentially contaminating or damaging equipment needed for accident recovery.

In addition, with the existing hardware and procedures at some plants, opening or closing the vent valves during certain accident sequences may not be possible. The inability to operate the vent path valves could result in uncontrolled release of containment atmosphere to the reactor building through the failed sheet metal ductwork. Therefore, venting through a sheet metal ductwork path, as has been implemented at some Mark I plants, most likely would greatly hamper or complicate post-accident recovery activities and is viewed by the NRC staff as inadequate for minimizing the risks to the public health and safety. For high-pressure venting to be effective, the entire vent system must be strengthened to withstand the expected venting pressure. On July 11, 1989, the Commission endorsed the staff's view (Reference 4) that the Mark I design should include a hardened wetwell vent from the airspace of the containment wetwell, and directed the staff to require a hardened vent capability for all Mark I plants for which the requisite modifications could be shown to be cost-effective. At that time, the Staff prepared and on June 25, 1990 published a draft Generic Environmental Assessment concerning hardened wetwell vent path modifications. The Staff issued generic

letters to Mark I licensees requesting that they install hardened wetwell vents.

All BWR Mark I licensees have voluntarily agreed to implement the actions recommended in the generic letter or, in the case of FitzPatrick plant, were found by the staff to have hardened vent path satisfying the intent of the generic letter. The NRC has concluded, in light of both the voluntarily actions of BWR Mark I licensees and 10 CFR 51.10(d), that the issuance of the generic letter need not be supported by the GEA. 10 CFR 51.10(d) states that Commission actions "initiating or relating to administrative or judicial civil or criminal enforcement actions are not subject to section 102(2) of NEPA * * * [including] any other matters covered by appendix C to part 2 of this chapter." 10 CFR part 2, appendix C, Paragraph IV.H, "Related Administrative Actions," lists generic letters as an "administrative mechanism" that supplements its formal enforcement authority. For this reason, the NRC concludes that the generic letter need not be supported by a GEA. However, since a draft GEA and FONSI was published, the NRC has decided to publish a final GEA to reflect the agency's final views on the environmental impacts of installation of hardened wetwell vents at BWR plants with Mark I containments.

Description of the Recommended Action: Review of the Impacts of Installation of the Hardened Wetwell Vents

The NRC staff's safety evaluation report (Reference 5) approved Revision 4 of the Boiling Water Reactor Owners Group Emergency Procedures Guidelines (EPGs) that included the staff's approval for venting BWR Mark I containments. This approval indicated that venting from the wetwell with the existing systems could reduce the likelihood of core melt and, in extremely rare cases, could help avoid uncontrolled releases of radioactive materials during severe core damage accidents. Since the issuance of Revision 4 of the EPGs, additional insights have indicated that the proposed venting strategy has a potential to breach the vent path inside the reactor building and could have significant detrimental effects on (1) radiation exposure effects on personnel, (2) potential plant recovery actions, and (3) public risk. A hardened wetwell vent capable of withstanding the anticipated severe accident pressure loadings would eliminate these disadvantages of using a vent path containing sheet metal ductwork.

The use of the containment vent to prevent a core-melt accident by reducing containment pressure would result in the release of very low levels of radioactivity associated with the reactor coolant. The reactor coolant steam would be released to the suppression pool that would retain most of the fission products. In the unlikely event of a core-melt accident, venting of the wetwell airspace would provide a scrubbed venting path to significantly reduce the release of particulate and volatile fission products (radioactive materials) to the environment. Only the noble gases would escape to the environment without any attenuation. Venting would reduce the likelihood of a late overpressure failure of the containment and would reduce offsite consequences for severe accidents if the containment shell does not fail.

If the shell fails because of a core debris attack (shall melt through by core melt released to the containment floor), venting will provide little benefit because fission products would be released directly into the reactor building. However, if shell failure was delayed for a period of a few hours (for example, by the addition of containment spray water over the molten core debris released to the containment floor), significant scribbing of radioactive material would still take place.

As discussed in SECY–87–297 (Reference 1), the installation of hardened vent to bypass the ductwork from the wetwell airspace to the plant's environment could include (1) additional isolation values to isolate the ductwork from the hardened vent path and (2) radiation monitors to monitor any offsite releases of radioactive materials in case of venting. The installation of a hardened vent would prevent any loss of safety equipment owning to a failure of the vent path inside the reactor building and, in the unlikely event of core melt, would result in release only of residual fission products (not scrubbed by the suppression pool) through the stack. Because the vent path is not expected to fail inside the reactor building, personnel would be able to repair equipment and perform other plant-recovery activities, if the levels of radiation in the containment were not excessive. Furthermore, because the environmental conditions in the reactor building would not be harsh, important equipment would not be expected to degrade or fail.

Estimated reductions of potential risks of severe accidents involving loss of decay heat removal capability (TW accident sequences) are shown in Table 1. The risk reductions are shown in persons-rems per reactor year (the bases and assumptions for the staff analyses are presented in Reference 6). The hardened wetwell vent path would also provide additional risk reduction for those accidents in which core melt occurred, because the suppression pool would scrub the radioactive material released to the containment by core debris.

The staff estimated the costs for installation of hardened wetwell vent path to be about $750,000. Costs were also provided by the licensees for the Dresden, FitzPatrick, Millstone 1, and Oyster Creek facilities. The NRC's and the licensees' cost estimates are summarized in Table I. The estimated costs of hardened wetwell vent installations are minimal when compared to the operating expenses of the plants and are not excessive when compared to the significant enhancement of safety achieved by the proposed action.

Environmental Impacts of Installation and Operation of Hardened Wetwell Vents

Radiological Impacts

The radiological impacts of installing a hardened wetwell vent system should not be significantly different from other operational modifications that occur at facilities such as reactors with Mark I containments. For example, a conceptual analysis of radiation exposures for installation of a filtered vent at the Limerick Generating Station indicates that annual radiation exposures (assuming 20 years of remaining plant life) would not exceed 2 man-rems per reactor-year. The small radiation dose associated with this proposed plant modification will not affect the licensees' ability to maintain individual occupational doses within the limits of 10 CFR part 20. This dose is expected to meet the criteria for the requirements of as low as is reasonably achievable (ALARA).

Each plant contains radioactive waste treatment systems that are designed to collect and process the gaseous, liquid, and solid waste that might contain radioactive material. The installation of a hardened wetwell vent will not affect any waste treatment systems or their effluents under normal plant conditions or under design basis accident conditions.

Installation of the hardened wetwell vent path should not significantly increase the radiation dose to operating personnel or the public. Any increased doses associated with the testing of the additional isolation valves should be

minimal and, in most cases, insignificant.

Thus, the staff has concluded that the installation of the hardened wetwell vent will not result in any significant increase in radiological impacts to workers or the public.

Because the operation of the wetwell vent system is postulated for extremely rare severe accidents, the impacts of the use of the wetwell vent system are discussed in terms of environmental risks. As stated previously, the venting from the wetwell airspace is intended to (1) reduce the risk of over-pressure failure of the containment and subsequent damage to the reactor core and (20) provide a scrubbed pathway (to decontaminate effluents) for containment pressure relief for rare situations involving core damage. Table 1 lists the reductions of potential risks for all Mark I facilities caused by venting before core damage. The reductions in potential risks are calculated to range from about 15 to 282 person-rems per reactor year. For rare situations in which core damage could occur, venting could prevent containment failure and unmitigated release of fission products to the environment. Venting through the suppression pool will ensure that most of the radioactive materials, excluding noble gases, would be trapped in the suppression pool and would not be released to the environment. Therefore, venting through the wetwell would reduce the radiological risks posed by severe accidents involving core damage. These additional benefits of wetwell venting have not been included in Table 1 results.

On the basis of the preceding discussion, the staff concludes that no incremental radiological environmental risks will be posed by operation of the wetwell vent system.

Non-Radiological Impacts

The non-radiological impacts from installing hardened wetwell vent systems should not be expected to be different from other operational modifications that occur during routine plant outages at facilities with Mark I containments.

No non-radiological effluents are expected to be affected from installing or using the hardened wetwell vent. The proposed plant modification and use of hardened wetwell vent will not require any change to the national pollution discharge elimination system permit.

Therefore, the staff concludes that the non-radiological environmental impacts of installing a hardened wetwell vent will be insignificant.

Alternatives Considered

To prevent or delay containment failure caused by overpressurization, the NRC staff considered the following alternatives to installation of hardened vents.

1. The containment pressure could be relieved using the existing ductwork vent path (the "No Action" option).
2. A hard pipe path to an external filter could be installed.
3. An alternative means of removing the decay heat either from the reactor or from containment could be installed.
4. Venting of containment could be prohibited.

Each of these alternatives is discussed in the following paragraphs.

Existing Ductwork Vent Path (No Action Option)

This alternative consists of no action and continued venting of the containment through the existing ductwork. However, the existing ductworks are designed to withstand a pressure of a few psi (Reference 7). The venting pressures expected during some accidents will be substantially higher than the ductwork design pressure. Consequently, venting could result in failure of the ductwork and a direct release of reactor coolant steam into the reactor building. The discharge of this high-temperature steam and other gases over an extended period of time could pose a threat to the availability or performance of safety-related equipment. In the event of core melt, the threat would be even greater, because substantially large amounts of radioactive materials will be released with the steam to the reactor building. Electrical cables, motor operators on valves, and relays could fail under these environmental conditions.

Adverse environmental conditions would also complicate personnel entry into the reactor building. Calculations from a study that examined venting during an anticipated transient without scram (ATWS) sequence indicated that a severe environment (high temperature and radiation) would be present in the reactor building during venting (Reference 8). The discharge of hydrogen under core melt conditions could result in hydrogen burns or detonations inside the reactor building. This environment could hamper recovery efforts by preventing personnel access to the reactor building and preventing repair of systems needed to terminate the accident. For these reasons, the existing Mark I designs do not ensure an adequate tractor building environment after a severe accident to permit personnel entry to regain control of the facility and do not maximize the potential reduction in environmental risk. Thus, the staff has concluded that the no-action alternative is unacceptable.

Installation of Hard Pipe Vent to External Filter System

This alternative is the same as the installation of a hardened vent with addition of an external filter. However, the external filter would not significantly increase removal of radioactive material because the suppression pool would remove nearly all material that could be removed by filtration. Consequently, the additional reduction in risk caused by an external filter system is expected to be small. Moreover, an external filter would not yield an incremental reduction in the core damage frequency beyond the reduction obtained with the hard pipe vent alone. In both cases, there would be no retention of noble gases. External filters have been estimated to cost $20 million (1982 dollars) (Reference 9) to $65 million (1987 dollars) for the Filtra design. Because the incremental benefit is very small compared to the proposed action and the incremental cost is very high, this alternative is not considered practical or reasonable.

Installation of Other Means of Decay Heat Removal

In lieu of venting containment, an addition decay heat removal system could be provided to remove the heat from either the reactor or the containment, or a system that has not been previously accounted for could be used on an ad hoc basis, such as the reactor water cleanup system. Installation of a new system was considered in NUREG–1289 (Reference 10), which is associated with Unresolved Safety Issue A–45, "Shutdown Decay Heat Removal Requirements." The installation of a new decay heat removal system was not found to be cost beneficial in NUREG–1289. The use of another, previously unaccounted-for system was estimated to require unusual or unplanned system piping line-ups, which, if performed incorrectly or inappropriately, could reduce the likelihood of accident recovery with normal systems or create a new and unanalyzed accident sequence (Reference 11). Therefore, this alternative is not considered practical or reasonable.

No Venting of Containment

This alternative would remove the guidance in Revision 4 of the Emergency Procedure Guideline (EPGs) that instructs the operator to vent the

containment under certain conditions. In the event of the loss of long-term decay heat removal capability without drywell failure, the containment drywell will probably fail because of overpressurization. The drywell failure could have a significant effect on the ability to return the plant to a safe and controlled condition and would result in an increase in risk to plant personnel and to the public (Reference 12). Therefore, this alternative is not practical or reasonable.

Finding of No Significant Impact

The staff reviewed the plant-specific features in conjunction with the installation of hardened wetwell vent path modifications. From the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the installation of hardened wetwell vents and that such use will not have significant adverse effects on the quality of the human environment.

TABLE 1.—ESTIMATED REDUCTION OF POTENTIAL RISKS OF SEVERE ACCIDENTS INVOLVING LOSS OF DECAY HEAT REMOVAL CAPABILITY (TW ACCIDENT SEQUENCES)

Plant name	TW frequency (per reactor-year)	Potential risk reduction (persons-rem per reactor-year) *	Installation cost (million)
Browns Ferry 1	2.3 E–05	32.7	*0.75
Browns Ferry 2	2.3 E–05	32.7	*0.75
Browns Ferry 3	2.3 E–05	32.7	*0.75
Brunswick 1	4.5 E–05	44.0	*0.75
Brunswick 2	4.5 E–05	44.0	*0.75
Cooper	4.5 E–05	45.6	*0.75
Dresden 2	1.4 E–05	50.2	[1] 1.00
Dresden 3	1.4 E–05	50.2	[1] 1.00
Duane Arnold	4.5 E–05	55.0	*0.75
Fermi 2	4.5 E–05	192.4	*0.75
Fitzpatrick	4.5 E–05	65.5	[1] 0.68
Hatch 1	4.5 E–05	39.2	*0.75
Hatch 2	4.5 E–05	39.2	*0.75
Hope Creek	6.3 E–05	281.9	*0.75
Millstone 1	1.4 E–05	35.1	[1] 1.10
Monticello	4.5 E–05	33.9	*0.75
Nine Mile Point 1	1.4 E–05	15.3	*0.75
Oyster Creek	1.4 E–05	55.4	[1] 1.50
Peach Bottom 2	3.6 E–06	15.5	*0.75
Peach Bottom 3	3.6 E–06	15.5	*0.75
Pilgrim	2.3 E–05	31.2	*0.75
Quad Cities 1	4.5 E–05	94.1	*0.75
Quad Cities 2	4.5 E–05	94.1	*0.75
Vermont Yankee	2.3 E–05	28.9	*0.75

* NRC estimate.
[1] Licensee Estimate.

References

1. SECY-87–297, U.S. Nuclear Regulatory Commission, "Mark I Containment Performance Improvement Program Plan," Commission Paper from V. Stello to NRC Commissioners, December 8, 1987.
2. NUREG-1150, U.S. NRC, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants," June 1989.
3. SECY-89–017, U.S. NRC, "Mark I Containment Performance Improvement Program," Commission Paper from V. Stello to NRC Commissioners, January 23, 1989.
4. Memorandum from S.J. Chilk to V. Stello, "SECY-89–017-Mark I Containment Performance Improvement Program," July 11, 1989.
5. Letter from A.C. Thadani to D. Grace, Chairman, BWROG, "Safety Evaluation of BWR Owners Group-Emergency Procedures Guidelines, Revision 4, NEDO-31331, March 1987," September 12, 1988.
6. Memorandum from M. Cunningham to W.D. Beckner, "Reduction in Risk from the Addition of Hardened Vents in BWR Mark I Reactors," October 19, 1989.
7. NUREG/CR-5225, U.S. NRC, "An Overview of BWR Mark I Containment Venting Risk Implications," November 1988.
8. Harring, R.M., "Containment Venting as a Mitigation Technique for BWR Mark I Plant ATWS," 1986 Water Reactor Safety Meeting, Gaithersburg, Maryland, October 1986.
9. K. Johansson, L. Nilsson, and A. Persson, "Design Considerations for Implementing a Vent-Filter System at the BARSEBACK Nuclear Power Plant," International Meeting on the Thermal Nuclear Safety, Chicago, August 29-September 2, 1982.
10. NUREG-1289, U.S. NRC, "Regulatory and Backfit Analysis: Unresolved Safety Issue A–45, Shutdown Decay Heat Removal Requirements," November 1988.
11. Letter from J. Dallman to J. Ridgely, "A Preliminary Assessment of BWR Mark II Containment Challenges, Failure Modes, and Potential Improvements in Performance," May 10, 1989.
12. NUREG/CR-5225, Addendum 1, "An Overview of BWR Mark I Containment Venting Risk Implications, An Evaluation of Potential Mark I Containment Improvements," June 1989.

Note: All referenced documents are available for public inspection and copying for a fee in the Commission's Public Document Room at 2120 L. Street, Lower Level, NW., Washington, DC 20555

Dated at Rockville, Maryland, this 18th day of February, 1993.

For the U.S. Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–4870 Filed 3–2–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 11–13, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on February 24, 1993.

Thursday, March 11, 1993

8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. The Committee will discuss

priorities for preparation of reports during this session.

8:45 a.m.–10:45 a.m.: Current License Renewal Issues (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff on the status of current license renewal issues, the establishment of a senior management review group to review the harmonization of the Maintenance and License Renewal Rules.

11 a.m.–11:30 a.m.: Computer Issues (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the need for and progress toward the staff's development of standards and criteria for digital instrumentation and control systems and the staff's policy on diversity.

11:30 a.m.–12:30 p.m.: Research on Organizational Factors (Open)—The Committee will discuss proposed ACRS reports on the NRC-sponsored research on organization factors, and on the NRC staff's Study of Human Performance in Operating Events. Representatives of the NRC staff and of the industry will participate as appropriate.

1:30 p.m.–3 p.m.: Reactor Operating Experience (Open/Closed)—The Committee will hear a briefing and hold discussions regarding the reactor trip and stuck open pressurizer safety valve event of July 3, 1992, that occurred at the Fort Calhoun Nuclear Power Plant. Representatives of the licensee and of the NRC staff will participate, as appropriate.

Portions of the session will be closed as necessary to discuss Proprietary Information related to this subject.

3:15 p.m.–4:45 p.m.: ISO Quality Standards (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the ISO 9000 quality management standard used by the European community, and how it differs from the quality standards being used in the U.S. nuclear industry.

4:45 p.m.–6 p.m.: Proposed ACRS Report on Computer Issues (Open)—The Committee will discuss a proposed ACRS report on the NRC staff's activities in defining appropriate standards and requirements for computer-based instrumentation and control systems. Representatives of the NRC staff and of the industry will participate, as appropriate.

Friday, March 12, 1993

8:30 a.m.–9:45 a.m.: ACRS Subcommittee Activities (Open)—The Committee will discuss the status of ACRS subcommittee assignments, including: (a) Alternate plugging criteria for degraded steam generator tubes, (b) piping design improvements for advanced plant designs, (c) proposed priority ranking of Generic Issue 152, "Design Basis for Values that Might be Subjected to Significant Blowdown Loads," and (d) the PWR version of the RELAP5/MOD–3 code and the analytical and experimental programs in support of the AP600 design certification effort. Representatives of the NRC staff will participate, as appropriate.

9:45 a.m.–10:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed reports items considered during this meeting.

10:45 a.m.–11:30 a.m.: Appointment of New Members (Open/Closed)—The Committee will discuss the qualifications of candidates proposed for appointment to the committee.

Portions of this session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

11:30 a.m.–12 noon: Upgrade of ACRS Conference Room (Open)—The Committee will be briefed by the ACRS staff on use of advanced audio-visual technology.

1 p.m.–1:30: Upgrade of ACRS Conference Room (Open)—The Committee will be briefed by the ACRS staff on the architectural arrangement for the new conference room.

1:30 p.m.–2:15 p.m.: Future ACRS Activities (Open)—The Committee will discuss the report of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee.

2:15 p.m.–3:15 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

3:30 p.m.–4 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses received from the NRC staff on recommendations made in ACRS rpeorts.

4 p.m.–4:30 p.m.: Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the report of the Planning and Procedures Subcommittee.

4:30 p.m.–6 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed reports regarding items considered during this meeting.

Saturday, March 13, 1993

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed Committee reports regarding items considered during this meeting.

12:30 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will discuss matters considered but not completed at previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 16, 1992 (57 FR 47494). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Acting ACRS Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Acting ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Acting ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matters being considered per 5 U.S.C. 552(c)(4) and information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the Acting ACRS Executive Director, Dr. John T. Larkins (telephone 301–492–4516), between 8:00 a.m. and 4:30 p.m. e.s.t.

Dated: February 25, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–4871 Filed 3–2–93; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31920; File No. SR–CBOE–92–17]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, 3, and 4 to Proposed Rule Changes by the Chicago Board Options Exchange, Inc., Relating to Flexible Exchange Options ("FLEX Options")

February 24, 1993.

I. Introduction

On August 31, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to list and trade

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

large-size, customized index options, referred to as Flexible Exchange Options ("FLEX Options") based on the Standard & Poor's Corporation ("S&P") 500 and 100 Stock Indexes.

Notice of the proposed rule changes were published for comment and appeared in the **Federal Register** on November 4, 1992.[3] Three comment letters were received on the proposed rule change.[4] The CBOE amended the proposal on January 19, 1993,[5] January 27, 1993,[6] February 9, 1993,[7] and February 24, 1993.[8] This order approves the proposal as amended.[9]

II. Background

The purpose of the CBOE's FLEX Option proposal is to provide a framework for the Exchange to list and trade index options that give investors the ability, within specified limits, to designate certain of the terms of the options. The CBOE is currently proposing to trade FLEX Options only on the S&P 100 and 500 stock indexes. In recent years, an over-the-counter ("OTC") market in customized index options has developed which permits participants to designate the basic terms of the options, including size, term to expiration, exercise style, exercise price, and exercise settlement value, in order to meet their individual investment needs. Participants in this OTC market are typically institutional investors, who buy and sell options in large-size transactions[10] through a relatively small number of securities dealers. The Exchange believes FLEX Options will help it compete with this growing OTC market in customized index options. In particular, the CBOE's FLEX Option proposal will not fix the following contract terms: (1) Strike prices; (2) exercise types; (3) expiration date;[11] and (4) form of settlement.

The CBOE believes that market participants will benefit from the trading of FLEX Options in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of the Options Clearing Corporation ("OCC") as issuer and guarantor of FLEX Options.

III. Description of the Proposal

Transactions in FLEX Options traded on the CBOE generally will be subject to the same rules that presently apply to the trading of CBOE index options.[12] In order, however, to provide investors with the flexibility to designate certain of the terms of the options and to accommodate other special features of FLEX Options and the way in which they are traded, the CBOE has proposed several new rules.

The principal rules proposed by the CBOE that are uniquely applicable to the FLEX market include a rule containing a new definitions (Rule 24A.1), a special rule regarding trading rotations (Rule 24A.3), rules setting forth the special terms of FLEX contracts and certain special pieces of information that must be included in FLEX Requests for Quotes and Responsive Quotes (Rule 24A.4), rules prescribing the mechanics of initiating a FLEX Request for Quotes and bidding and offering in response, thereto, rules setting forth the principles applicable to the formation of binding FLEX contracts, rules defining the applicable priority principles (Rules 24A.5), special position limit and exercise limit rules (Rules 24A.7 and 24A.8), special FLEX market-maker appointment rules (Rule 24A.9) and special market-maker capital and letter of guarantee rules (Rules 24A.13, 24A.14 and 24A.15), as well as certain administrative rules respecting Exchange services (Rules 24A.12 and 24A.16). Discussion of each of these rules follows.

Proposed Rule 24A.1 adopts nomenclature uniquely tailored to fit the special characteristics of FLEX Options and the FLEX market. For example, the term "Request Response Time" refers to the time interval, set by the submitting member in its Request for Quotes, during which responsive bidding and offering is to take place. Similarly, the term "FLEX Quote" has both its usual connotation—market-maker bids and offers—and a new connotation—brokers' orders to purchase and orders to sell—that is necessary in view of the unique mechanics of the FLEX exchange auction.

Proposed Rule 24A.2 provides that FLEX trading will take place during the normal exchange trading hours set for trading index options, although the Exchange's Board of Directors ("Board") is given specific authority to narrow or otherwise restrict the time set for FLEX trading as circumstances dictate.[13] At the present time, the Board has determined that FLEX trading will commence at 9 a.m. Central Time, one-half hour later than the opening time currently set for the trading of non-FLEX index options, and, will conclude at 3:15 p.m. Central Time, the existing close of trading at the Exchange for index options.[14] as a complementary rule uniquely applicable to FLEX Options, Proposed Rule 24A.3 specifies that there will be no trading rotations in

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[3] *See* Securities Exchange Act Release No. 31361 (October 27, 1992), 57 FR 52655.

[4] *See* Letters from David B. Bohl, Partner, KC–CO Investments, LP, to Jonathan G. Katz, Secretary, SEC, dated November 25, 1992 ("KC–CO Letter"); R. Warren Langley, General Partner, Hull Trading Company, to Jonathan G. Katz, Secretary, SEC, dated November 23, 1992 ("Hull Trading Letter"); and Vincent J. Bailey, Jr., Vice President, BEA Associates, to Jonathan G. Katz, Secretary, SEC, dated November 24, 1992 ("BEA Associates Letter").

[5] On January 19, 1993, the CBOE filed Amendment No. 1 regarding technical revisions to exercise limits/minimum size, expiration dates, requests for quotes, SPX Floor Procedure Committee, quote display, capital requirements and letters of guarantee.

[6] The Exchange on January 27, 1993 filed Amendment No. 2 setting forth applicable position and exercise limits for FLEX Options.

[7] On February 9, 1993, Amendment No. 3 was filed with the Commission for the purpose of applying the S&P 500 index options arbitrage restrictions to certain S&P 500 FLEX Options, and, confirming that position limits for FLEX Options will be treated as a three-year pilot program.

[8] The Exchange on February 24, 1993 filed Amendment No. 4, which among other things, clarifies that priority, parity, and precedence procedures for bids and offers of FLEX Options must be in compliance with Section 11(a) of the Exchange Act and the rules promulgated thereunder. *See* Letter from William J. Barclay, Vice President, Strategic Planning and International Development, CBOE, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated February 24, 1993.

[9] Although the Commission is approving the proposal, including the amendments on an accelerated basis, the Commission is soliciting comment on the substance of those amendments. Any comments received will be considered in connection with review of further CBOE initiatives in this area.

[10] Large size in this context is intended to mean options having an underlying contract value equal to or greater than $1 million.

[11] The FLEX Options proposal, however, requires that the expiration dates for FLEX Options be at least three business days away from the expiration dates for existing listed options in order to protect against possible market disruptions that may otherwise result from the concurrent expiration of listed and FLEX Options.

[12] *See* CBOE Constitution and Rules, Chapter XXIV (January 1992), as amended by appropriate CBOE rule changes.

[13] Specifically, the CBOE proposes to implement the hours of trading for FLEX Options as follows: (1) Initial hours of FLEX trading will be 9 a.m.—3:15 p.m. (Chicago Time); (2) FLEX trading hours may be altered at the discretion of the Exchange by 15 minutes or less so long as the change does not extend trading beyond the normal CBOE business hours of 8:30 a.m.—3:15 p.m. (Chicago Time); (3) FLEX trading hours that are altered by more than 15 minutes but remain within normal business hours must be submitted by the Exchange to the Commission in a section 19(b)(3)(A) filing; (4) FLEX trading hours extended beyond the CBOE's normal business hours must be submitted to the Commission for approval pursuant to section 19(b)(2); and (5) the Exchange will provide adequate advance notification to its members and member organizations of such changes in FLEX trading hours. *See* Letter from William J. Barclay, Vice President Strategic Planning and International Development, CBOE, to Sharon M. Lawson, Assistant Director, SEC, dated February 11, 1993.

[14] *Id.*

FLEX Options, either at the opening or at the close of trading.

Proposed Rule 24A.4 specifies the term elements and other informational ingredients that must be included in Requests for Quotes, FLEX Quotes submitted in response to such requests, and, ultimately, FLEX contracts that are the product of FLEX trading. As paragraph (b) of this proposed rule indicates, the content of certain terms of each FLEX contract is to be determined by the parties of the contract. Other terms, such as the level of the index multiplier and the nature of the rights and obligations of FLEX Option purchasers and sellers, are the same for FLEX as for non-FLEX index options.

More specifically, Paragraph (c) of Proposed Rule 24A.4 specifies the term elements that a submitting member must include in its Request for Quotes and indicates the content alternatives available for each term. Under this paragraph a submitting member must designate, among other terms, the day, month and year of the FLEX Option's expiration, subject to certain limitations designed to avoid the overlap of FLEX expirations with expirations of non-FLEX index options.[15] Similarly, a submitting Member must identify the exercise price [16] and the exercise settlement value [17] of the FLEX Option, and those variable FLEX terms must fit within stated parameters.

Paragraph (d) of this proposed rule lists certain additional categories of information that must be addressed by the submitting member in its Request for Quotes. In particular, under this paragraph a submitting member must indicate the type and form of quote sought, the length of the Request Response Time (*i.e.*, the time interval during which FLEX-participating members may enter quotes responsive to the request),[18] and the submitting member's intention, if any, to cross a customer order or act as principal with respect to any part of the FLEX trade.

Finally, paragraph (e) of this proposed rule specifies the maximum term and the minimum value size of any FLEX contract and provides that the term and size may be set, within the stated limits, at the discretion of the submitting member or the quoting party, as applicable. Under this paragraph, the maximum FLEX term is five years; the minimum value size (i.e., the aggregate underlying dollar value that is the subject of the option) for a FLEX Request for Quotes is $10 million in an opening transaction in a new FLEX Option series and $1 million in an opening or closing transaction in any currently-opened FLEX series (or less in a closing transaction where the remaining underlying value is less than $1 million); and the minimum value size for quotes of market-makers in response to a Request for Quotes is $1 million or any lesser amount reflected in a Request for Quotes (except that market-makers appointed to FLEX Options on the underlying index that is the subject of the Request for Quotes must be prepared to respond to a Request for Quotes in a size of at least $10 million underlying value or the dollar amount indicated in the Request for Quote, whichever is less).

These provisions, collectively, provide investors and FLEX-participating members with significant latitude in structuring the terms of FLEX Options contracts. The Exchange believes that such latitude is both important and necessary to the Exchange's effort to create a product and a market that provides members and investors interested in FLEX-type options with an improved but comparable alternative to the OTC options market. To enable the efficient, centralized clearance and active secondary trading of opened FLEX Options, however, the extent of variability in structuring FLEX Options is necessarily limited. Only certain terms are subject to flexible structuring by the parties to FLEX transactions, and most of such terms have a specified number of alternative configurations. In addition to the specified term alternatives indicated above, FLEX Options will be limited to transactions on the S&P 100 and the S&P 500 Indexes [Proposed Rule 24A.4(a)] and shall be denominated for settlement in cash in U.S. dollars only [Proposed Rule 24A.4(e)].

Proposed Rule 24A.5 prescribes in some detail the mechanics of submitting Requests for Quotes and entering responsive bids and offers. These mechanics, described below, are designed to create a modified auction that takes into account the relatively small number of transactions that are likely to occur in this institutional, large-size market, while at the same time providing the FLEX market with the price improvement and transparency benefits of competitive Exchange floor bidding and offering, as compared with the OTC market. Proposed Rule 24A.5 establishes time and price priority principles and contains special rules respecting the bidding and offering process and the method of allocating trades in instances in which the submitting member expresses an intention to cross or act as principal on a Request for Quotes. These proposed rules are designed to promote active bidding and offering that will generate the best price available, while also providing incentives to market-makers appointed to FLEX Options, floor participants, and upstairs firms alike to participate in the FLEX market.

In particular, paragraphs (a) and (b) of proposed Rule 24A.5 indicate that the FLEX-bidding and offering process is initiated once a submitting member has supplied a Request for Quotes in proper form and the FLEX Post Official has disseminated the term of that request at the post and over FLEX communications. Thereafter, FLEX Quotes in proper form must be entered, but may be modified or withdrawn (subject to special limitations imposed on appointed market-makers) by public outcry at any time during the Request Response Time. The length of the Request Response Time, which must fall within time parameters to be set by the SPX Floor Procedure Committee, is to be specified in the Request for Quotes. At the expiration of the Request Response Time, the FLEX Post Official will determine the best bid and/or offer (the "BBO").

Proposed paragraphs (c)–(f) provide that the BBO will be displayed at the post and over communication facilities and, at that point, or after further bidding and offering that occurs in certain specified circumstances, the submitting member will have the opportunity to accept or reject the BBO.

[15] *See* Securities Exchange Act Release Nos. 31800 (February 1, 1993), 58 FR 7274 ("QIX Approval Order"); 30944 (July 21, 1992), 57 FR 33376 ("A.M.-settled SPX Approval Order").

[16] Specifically, exercise prices can be determined in reference to (a) a specific index value number, (b) a method for fixing such a number at the time a FLEX quote is accepted, (c) a percentage of index value calculated as of the open or close of trading on the Exchange on the trade date, or (d) the cap interval in the case of European-Capped style options.

[17] Specifically, exercise settlement value is defined as the index value reported at the close or at the open of trading on the Exchange or as a specified average provided that any average index value must conform to the averaging parameters established by the SPX Floor Procedure Committee, that is used in setting the exercise settlement amount.

The SPX Floor Procedure Committee has determined that the averaging parameters will be limited to three alternatives: the average of the opening and closing index values; the average of the intra-day high and low index values; and the average of the opening, closing, and intra-day high and low index values. *See* Amendment No. 4, *supra* note 8

[18] Initially, the Request Response Time will be a minimum of 10 minutes and a maximum of 30 minutes. Under the proposed rules, the SPX Floor Procedure Committee has the authority to set the range for the Request Response Time. The Exchange will provide at least 2 days notice to members and member organizations of any changes to the Request Response Time range. *See* Amendment No. 4, *supra* note 8.

The submitting member, however, has no obligation to accept the BBO. Thus, whenever the BBO is rejected the Request for Quotes expires, although FLEX-participating members other than the submitting member may accept the unfilled balance of the BBO. Similarly, whenever the BBO is accepted, the transaction (or transactions) will be executed in accordance with the crossing principles and priority principles set forth in paragraph (e), although, again, FLEX-participating members may accept any unfilled balance of the BBO.

Proposed Rule 24A.7 states position limits that will be unique to FLEX Options. Specifically, proposed Rule 24A.7 provides that FLEX Options will be subject to a maximum limit of 200,000 contracts on the same side of the market on a given underlying index, without aggregation for other contracts on the same index with one exception. Under the proposal members must, at the close of business two days prior to the last day of trading of the calendar quarter aggregate positions in P.M.-settled FLEX Options with comparable quarterly expiration index options ("QIXs") and those positions may not exceed the QIX limits specified in Rule 24.4 (*i.e.*, 25,000 contracts on the same side of the market in the case of options on the S&P 100 stock index and 45,000 contracts on the same side of the market in the case of options on the S&P 500 stock index).[19] In each case, the applicable hedge exemptions under Rule 24.4 may be applied to the aggregate positions.[20]

Proposed Rule 24A.9 provides for separate appointments of market-makers to FLEX Options, although the appointment process will be essentially the same as appointments to other options. This rule further provides that appointed market-makers will have an affirmative obligation to quote in a size of at least $10 million, in response to every Request for Quotes on a FLEX Option on an index to which the market-maker is appointed. Such quotes must be firm, unless modified or withdrawn prior to the end of the Request Response Time, for the duration of the Request Response Time and, if applicable, the BBO Improvement Interval. As noted earlier, market-makers have no obligation to maintain continuous quotes or to quote a minimum spread, and quotes expire at the end of each FLEX bidding and offering period.

Proposed Rules 24A.13, 24A.14, and 24A.15 set minimum financial requirements for Market-Makers trading or appointed to FLEX Options. The financial minimums stated in proposed Rules 24A.13 and 24A.14 are unique to FLEX Options.

Proposed Rule 24A.13 requires every market-maker to maintain at least $100,000 in net liquidating equity in any FLEX trading account with each given clearing member. Proposed Rule 24A.14 requires FLEX-appointed market-makers to maintain at least $1 million in net liquidating equity or net capital, as applicable.

Proposed Rule 24A.15 extends the general letter of guarantee requirement under existing Exchange Rule 8.5 to FLEX market-makers, thereby subjecting FLEX market-makers to a focused creditworthiness review by their clearing members. The review and issuance requirement imposed under proposed Rule 24A.15 substantially supplements the independent financial requirements of proposed Rules 24A.13 and 24A.14.[21]

IV. Comments Concerning the Proposal

As noted above, the Commission received three comment letters in support of CBOE's FLEX Options proposal. Two of the commentators are CBOE market makers who expressed their intent to become FLEX market makers and expressed the view that the FLEX product will allow holders of equity portfolios to hedge risk and modify return profiles matching their business needs and would be an essential step in the process of linking the exchange and OTC derivatives markets.[22] Both of these commentators agreed that larger position limits (than are presently available for standardized stock index options) and the ability to specify the manner of expiration settlement value for the component securities of the index at either the open or close of trading are necessary in order for the FLEX Options to be successful. The final commentator supported the CBOE's FLEX proposal, asserting that the customization and flexibility inherent in FLEX Options will benefit the options markets by providing price discovery, liquidity and financial stability for options that would otherwise be traded in a non-transparent fashion in the OTC market.[23]

V. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[24] In particular, the Commission believes that the proposed rule change is designed to provide investors with a tailored or customized product that may be more suitable to their investment needs. For instance, as noted by the CBOE and the commentators, the OTC market in customized index options has developed, in part, to meet the needs of institutional investors who require increased flexibility for the purpose of satisfying particular investment objectives that could not be met by the standardized or exchange markets in options. Accordingly, the Commission believes the CBOE proposal is a reasonable response by the Exchange to meet the demands of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market in order to satisfy their hedging needs, and will thereby promote competition among these markets.

In addition, the Commission believes that the CBOE proposal will help to promote the maintenance of a fair and orderly market because the purpose of the proposal is to extend the benefits of a listed, exchange market in S&P 100 and 500 options that have certain terms varied by the particular investor. The attributes of the Exchange's options

[19] In the case of P.M.-settled FLEX Options based on the S&P 500, no more than 25,000 contract may be used for purposes of taking advantage of any differential in price between the S&P 500 index and securities underlying the S&P 500.

[20] Under the proposal, CBOE's position limits would be established as a three-year pilot, during or following which adjustments may be required. In addition, the CBOE has stated that it will monitor the effect of the position limits at the end of the first year of trading and provide the Commission with a report concerning the adequacy of the limits and its effects on the underlying cash market. *See, infra*, discussion section on one year monitoring report.

[21] The proposed rule changes include the following minor changes as well as the changes discussed in the text. Proposed Rules 24A.16 and 24A.17 make certain Exchange services and certain specific rules inapplicable to FLEX Options. Proposed Rule 24A.6 enables a Floor Broker to exercise discretion with respect to the number of FLEX Option contracts to be purchased or sold—notwithstanding contrary limitations in Rule 6.75—in view of the special features that will be associated with FLEX Option bidding and offering. Finally, proposed Rule 24A.12 establishes a new class of Exchange employee—a FLEX post official—and sets forth the post official's special duties.

[22] *See* KC–CO Letter and Hull Trading Letter, *supra* note 4. Specifically, Hull Trading asserted that linking the exchange and OTC derivatives markets was critical for the following reasons: (1) To achieve sufficient market transparency and oversight of equity security transactions in an integrated fashion and insure market integrity under all conditions; (2) to "level the playing field" providing a more competitive market for investors and reducing the artificial oligopoly in the OTC market for the large international financial institutions; and (3) to improve the competitiveness of the U.S. market placer reducing the transfer of business to foreign markets.

[23] *See* BEA Associates Letter, *supra* note 4.

[24] 15 U.S.C. § 78f(b)(5) (1982).

market versus an OTC market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of OCC for all contracts traded on the Exchange.

In general, transactions in FLEX Options will be subject to many of the same rules that apply to index options traded on the CBOE. In order to provide investors with the flexibility to designate terms of the options and accommodate the special trading of FLEX Options, however, several new rules will apply solely to FLEX Options.

Due to the customized nature of these options, FLEX Options will not have trading rotations at either the opening or closing of trading. In addition, the auction process outlined above in proposed Rule 24A.5 sets forth a procedure of customized negotiation for those investors seeking particular flexibility in options terms.[25] Accordingly, the CBOE proposed rules specific to FLEX vary from the traditional procedure for trading non-FLEX stock index options.

The Commission believes that the FLEX auction process, as outlined in CBOE's proposal, appears reasonably designed to provide the benefits of an Exchange auction with features of a negotiated transaction between investors. The Commission recognizes that CBOE's proposal marks, in many respects, an experiment in trading option contracts of substantial value, for which continuous quotation may be difficult to sustain.

Accordingly, CBOE has established procedures for quotes upon request, which must then be firm for a designated period and which will be disseminated through the Options Price Reporting Authority ("OPRA").

The Commission notes that FLEX Options can be constructed with expiration exercise settlement based on the closing values of the component securities, which can result in adverse effects for the markets in those securities.[26] Although the Commission continues to believe that basing the settlement of index products on opening as opposed to closing prices on Expiration Fridays helps alleviate stock market volatility,[27] these concerns are reduced in the case of FLEX Options, since expiration of these stock index options will not correspond to the normal expiration of stock index option, stock index futures, and options on stock index futures. In particular, FLEX Options will never expire on an "Expiration Friday" or any other "Expiration Fridays" in March, June, September and December, thereby diminishing the impact that FLEX Options could have on the market. Also, as noted above, the proposal would limit the effect on securities markets by addressing the relationship between FLEX and QIX Options. As proposed, CBOE Rule 24A.7 requires P.M.-settled FLEX Options to be aggregated with QIXs that are based on the same index and have the same expiration date. In such a case, the FLEX Options would be aggregated two days prior to expiration subject to the lower QIX position limits of 25,000 for S&P 100 options and 45,000 for S&P 500 options. The Commission believes that these rules should help prevent an investor from using FLEX Options for the purpose of avoiding the position limits applicable to QIXs.

Nevertheless, because the position limits for FLEX Options are much higher than those currently existing for outstanding exchange-traded index options and open interest in one or more FLEX series could grow to significant exposure levels, the Commission cannot rule out the potential for adverse effects on the securities markets for the component securities underlying FLEX Option stock indices. The CBOE has taken several steps to address this concern, including establishing the proposed position limits as a three-year pilot and undertaking to monitor open interest, position limit compliance and potential adverse market effects carefully and to report to the Commission after one year's experience trading FLEX Options. That report will include, among other things:

- The type of strategies used by FLEX Options market participants and whether FLEX Options are being used, in lieu of existing standardized stock index options.
- The type of market participants using FLEX Options.
- The terms which are predominantly being "flexed" by market participants, *i.e.*, strike prices, settlement value (A.M. v. P.M.), term of duration, European v. American style.
- The size of the FLEX position on average, the size of the largest FLEX positions on any given day and the size of the largest FLEX position held by any single customer/member.
- The relationship between strike prices and current index value.
- Whether there is significant interest in long-term expirations greater than nine months.
- Any effect FLEX positions have had on the underlying cash market, including an analysis of FLEX positions and their market impact on days NYSE's Rule 80A is invoked.

In addition, the Commission expects and the CBOE has agreed to monitor the actual effect of FLEX Options once trading commences and take prompt action (including timely communication with marketplace self-regulatory organizations responsible for oversight of trading in component stocks) should any unanticipated adverse market effects develop.

Lastly, based on representations from the CBOE, the Commission believes that the CBOE and OPRA will have adequate systems processing capacity to accommodate the additional options listed in connection with FLEX Options. Specifically, the Exchange represents that "CBOE and OPRA have the necessary systems capacity to support the new series which could result from introduction of FLEX options.[28]

The Commission finds good cause for approving proposed Amendments Nos. 1, 2, 3, and 4 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because such amendments will help to benefit the FLEX Options market and market participants employing these options while at the same time reducing the possible exposure to the market from these larger positions.[29] In addition, the changes included in Amendment No. 1 are technical in nature rendering acceleration reasonable. The Commission accordingly believes that granting accelerated approval of the

[25] A submitting member (the Exchange member that initiates the FLEX auction process by submitting a request for quotes) is under no obligation to accept any FLEX bid or offer, even if it is the best bid or offer ("BBO"). Proposed CBOE Rule 24A.5(c)(iv).

[26] *See* A.M.-settled SPX Approval Order *supra* note 14

[27] *Id.*

[28] *See* Letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated February 8, 1993, incorporating a memorandum from Joseph P. Corrigan, Executive Director, OPRA, to Bill Barclay, CBOE, dated February 8, 1993.

[29] In the original FLEX Option rule filing, the CBOE proposed position and exercise limits of 500,000 contracts. The Commission received three comments supporting the expanded position limits for FLEX Options. Accordingly, the Commission believes that permitting a maximum FLEX Options position of 200,000 contracts instead of the requested 500,000 contracts is equally supportable by market participants such as the commentators, even though it is not expansive as originally proposed. For a more detailed discussion of the comments, *See supra* Section IV.

proposed rule change is appropriate and consistent with Section 6 of the Act.

VI. 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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the AMEX. All submissions should refer to File No. SR-CBOE-92-17 and should be submitted by (insert date 21 days from date of publication).

VII. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and Sections 6 and 11A of the Act in particular.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[30] that the proposed rule change (SR-CBOE-92-17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-4799 Filed 3-2-93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

February 25, 1993.

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:

Volunteer Capital Corp.
Common Stock, $.05 Par Value (File No. 7-10291)
Washington National Corp.
$2.50 Conv. Pfd., $5.00 Par Value (File No. 7-10292)
Washington Post Company
Class B Common Stock, $1.00 Par Value (File No. 7-10293)
Waxman Industries, Inc.
Common Stock, No Par Value (File No. 7-10294)
Wean, Inc.
Common Stock, $1.00 Par Value (File No. 7-10295)
Wean, Inc.
5.25% Pfd. Ser. A, $24.00 Par Value (File No. 7-10296)
Wells Fargo & Company
Adj. Rte. Cum. Pfd. Ser. A, No Par Value (File No. 7-10297)
Wells Fargo & Company
Adj. Rte. Cum. Pfd. Ser. B, No Par Value (File No. 7-10298)
Western Mining Corp. Holdings Ltd.
American Depositary Shares, No Par Value (File No. 7-10299)
Williams Companies
$3.875 Conv. Exch. Pfd., $1.00 Par Value (File No. 7-10300)
Xerox Corporation
$3.6875 Ten-Yr. S.F. Pfd., $1.00 Par Value (File No. 7-10301)
Xerox Corporation
$4.125 Twenty-Yr. S.F. Pfd., $1.00 Par Value (File No. 7-10302)
Zenxi Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-10303)
2002 Target Term Trust, Inc.
Common Stock, $.001 Par Value (File No. 7-10304)
Acceptance Insurance Companies, Inc.
Common Stock, $.40 Par Value (File No. 7-10305)
Banco Bilbao Vizcaya Int'l (Gibraltar) Ltd.
American Depository Shares, Ser. B. (rep. 1 Non-Cum. Gtd. Pref. Sh. Ser. B) (File No. 7-10306)
Betz Laboratories, Inc.
Common Stock, $.10 Par Value (File No. 7-10307)
Blackrock 1999 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7-10308)
Capitol American Financial Corp.
Common Stock, No Par Value (File No. 7-10309)
Caremark International
Common Stock, $1.00 Par Value (File No. 7-10310)
Carmike Cinemas, Inc.
Class A Common Stock, $.03 Par Value (File No. 7-10311)
Central Maine Power Co.
Div. Ser. Pfd. Stk. 7⅞% Ser., $100.00 Par Value (File No. 7-10312)
Chart Industries, Inc.
Common Stock, $.01 Par Value (File No. 7-10313)
Chesapeake Utilities Corp.
Common Stock, $0.4867 Par Value (File No. 7-10314)
Coles Myer Ltd.
American Depositary Receipts (rep. 8 Ord. Shares) (File No. 7-10315)
Comp USA
Common Stock, No Par Value (File No. 7-10315)
Extercapital Ltd.
Non-Cum. Gtd. Pref. Shares, Ser. A (File No. 7-10316)
First Chicago Corp.
Depositary Shares (rep. 1/25 sh. of 8.45% Cum. Pfd. Stock, Ser. E) (File No. 7-10317)
First Colony Corp.
Common Stock, No Par Value (File No. 7-10318)
Hayes Wheels International, Inc.
Common Stock, $.01 Par Value (File No. 7-10319)
Health Care Reit, Inc.
Common Stock, $1.00 Par Value (File No. 7-10320)
Health Care Reit, Inc.
Common Stock, $1.00 Par Value (File No. 7-10320)
Health Images, Inc.
Common Stock, $.01 Par Value (File No. 7-10321)
Kroger Co.
Common Stock, $1.00 Par Value (File No. 7-10322)
Resource Mortgage Capital Corp.
Common Stock, $.01 Par Value (File No. 7-10323)

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 March 18, 1993, written data, views and arguments concerning the above-referenced applications. 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, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are 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. 93-4859 Filed 3-2-93; 8:45 am]

BILLING CODE 8010-01-M

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[30] 15 U.S.C. § 78s(b)(2) (1982)

[31] 17 CFR § 200.30-3(a)(12) (1992).

[Release No. 34-31918; File No. SR-NASD-92-35]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to Margin Requirements

February 24, 1993.

On August 20, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder.[2] The NASD subsequently filed on December 4, 1992, Amendment No. 1 to the filing which replaced in its entirety the original filing. The rule change amends Article III, section 30, Schedule A of the Rules of Fair Practice to conform closely to the NASD's margin rules with those of the New York Stock Exchange[3] ("NYSE") by deleting and replacing the current provisions of appendix A with rule language substantially identical to the NYSE margin rules.[4]

Notice of the proposed rule change, together with the terms of the substance of the proposal was provided by issuance of a Commission release (Securities Exchange Act Release No. 31684, January 4, 1993), and by publication in the **Federal Register** (58 FR 3576, January 11, 1993). No comments were received in response to the Commission release. This order approves the proposed rule change.

In November 1988 the NASD filed a proposed rule change, SR-NASD-88-50,[5] with the SEC to amend appendix A to Article III, Section 30 of the Rules of Fair Practice ("appendix A") in order to make it consistent with the then-recently approved amendments to the NYSE's margin rules (NYSE Rule 431). While the proposed rule change was pending, the NYSE again amended its margin rules.[6] The NASD's current proposal further amend appendix A to conform closely the provisions of appendix A to the amended NYSE margin rules.

The Commission has determined to approve the NASD's proposal. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of section 15A(b)(6) of the Act.[7] Section 15A(b)(6) requires, in part, that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. The proposed rule change is designed to make the NASD's margin rules consistent with those of the NYSE. This will in turn foster coordination between the markets by achieving parity between the margin requirements of the various SROs. The rule change herein approved will foster coordination in regulating, clearing, settling, and facilitating transactions in securities by providing for uniformity in the SROs' margin schemes and reducing confusion among customers dealing with NYSE and non-NYSE-member firms. This proposal will protect investors and the public interest, and is consistent with the Act because it will ensure that the margin requirements reflect current regulatory and credit risk returns.

The Commission does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-92-35 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-4800 Filed 3-2-93; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] *See* NYSE Rules 431 and 700; *see also* Securities Exchange Act Release No. 24144 (February 27, 1987), 52 FR 7245 (March 9, 1987) and Securities Exchange Act Release No. 25178 (December 8, 1987) 52 FR 24920 (December 15, 1987) which amended the NYSE's rules on margins.

[4] While similar, there are a number of substantive differences between the NYSE and the NASD's margin rules; such as the manner in which net capital is computed and the technical margin requirements for basket transactions with market makers and specialists accounts.

[5] Simultaneously with the filing of this proposed rule change, the NASD withdrew its filing SR-NASD-88-50.

[6] In addition the Commission approved an amendment to appendix A of the Rules of Fair Practice to provide margin rules for securities which are listed on "incubator" or "emerging company" exchanges such as the American Stock Exchange's Emerging Company Marketplace. *See* Securities and Exchange Act Release No. 30703 (May 14, 1992), 57 FR 21684 (May 21, 1992).

[7] 15 U.S.C. § 78o-3 (1988).

[8] 17 CFR 200.30-3(a)(12) (1992).

[Release No. 34-31919; File No. ODD-93-1]

Self-Regulatory Organization; the Options Clearing Corporation; Order Approving Supplement to Options Disclosure Document Regarding Flexible Exchange Options ("FLEX Options")

February 24, 1993.

On January 22, 1993, the Options Clearing Corporation ("OCC"), in conjunction with the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Rule 9b-1 under the Securities Exchange Act of 1934 ("Exchange Act"),[1] copies of a Supplement to the Options Disclosure Document ("ODD") which describes the characteristics and risks of trading in the CBOE's new Flexible Exchange Options ("FLEX Options").[2] Five definitive copies of the Supplement were delivered on February 24, 1993.

The proposed Supplement to the ODD provides for disclosure to accommodate the CBOE's FLEX Options proposal which has been submitted to the Commission separately.[3] This Supplement, which is to be read in conjunction with the more general ODD entitled "*Characteristics and Risks of Standardized Options,*" describers, among other things, the special characteristics, features, and risks of FLEX Options. Pursuant to rule 9b-1, the Supplement will have to be provided to investors in FLEX Options before their accounts are approved for FLEX transactions or their orders for FLEX Options are accepted.

The Commission has reviewed the ODD Supplement and finds that it complies with rule 9b-1. The Supplement is intended to be read in conjunction with the ODD, which discusses the characteristics and risks of stock index options generally. The Supplement provides additional information regarding FLEX Options sufficient to describe the special characteristics and risks of these products.

[1] 17 CFR 240.9b-1 (1990).

[2] In conjunction with the filing of the Supplement to the ODD, the CBOE and OCC requested a Commission order pursuant to rule 9b-1(a)(4) designating FLEX Options as "standardized options" for purposes of Rule 9b-1 under the Exchange Act as well as Form S-20 under the Securities Act of 1933 ("Securities Act"), as amended. The Commission approved this request. *See* Securities Exchange Act Release No. 31910 (February 23, 1993).

[3] *See* Securities Exchange Act Release No. 31361 (October 27, 1992), 57 FR 52655.

Rule 9b–1 provides that an options market must file five copies of amendments to a disclosure document with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the protection of investors.[4] The Commission believes it is consistent with the public interest and the protection of investors to allow distribution of the Supplement as of February 24, 1993, a date which is within 30 days of the date definitive copies of the Supplement were submitted to the Commission. Specifically, the Commission believes that, because the proposed Supplement provides adequate disclosure of the special characteristics, features, and risks of trading in FLEX Options, thereby helping to ensure that customers engaging in FLEX Options transactions are capable of understanding the risks of such trading activity, it is consistent with the public interest for it to be distributed to investors before the planned February 26, 1993 commencement of FLEX Options trading on the CBOE.

It is therefore ordered, pursuant to rule 9b–1 under the Act,[5] that the proposed Supplement to the ODD to accommodate the CBOE's proposed trading of FLEX Options is approved, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 93–4801 Filed 3–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19298; 812–8028]

Colonial Trust I, et al.

Dated: February 25, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Colonial Trust I, Colonial Trust II, Colonial Trust III, Colonial Trust IV, Colonial Trust V, Colonial Trust VI, Colonial Income Trust, Colonial International Equity Index Trust, Colonial Small Stock Index Trust, Colonial Strategic Income Trust, Colonial United States Equity Index Trust (the "Trusts"), and Colonial Management Associates, Inc. ("Colonial").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek to amend a prior order permitting the Trusts to: (a) issue three classes of shares representing interests in the same portfolio of securities, one of which would convert into another class with a lower rule 12b–1 distribution fee after a specified period, and (b) assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of shares of one class. The amended order would permit the Trusts to issue additional classes of shares under terms that may differ from those of the three classes permitted under the prior order

FILING DATE: The application was filed on August 2, 1992 and amended on October 23, 1992, January 14, 1993, and February 19, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on March 22, 1993 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Senior Attorney, at (202) 272–7779, 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 from the SEC's Public Reference Branch.

Applicants' Representations

1. Each Trust is an open-end management investment company registered under the Act. Some Trusts have multiple portfolios with separate investment objectives and policies, and with segregated assets. Colonial serves at the Trusts' investment adviser and principal underwriter.

2. Under an order of the Commission dated May 6, 1992 (Investment Company Act Release No. 18692) (the "Original Order"), the Trusts and any other open-end management investment company that is a member of the Colonial "group of investment companies," as defined in rule 11a–3 under the Act (together with each existing series of the Trusts, the "Funds"), are permitted to issue three classes of shares, and to impose and, under specified circumstances, waive a contingent deferred sales charge ("CDSC").

3. Applicants seek to amend the Original Order to permit the establishment of a multi-class distribution system (the "Multi-Class Distribution System") that would allow the Funds from time to time to issue additional classes of shares under terms that may differ from those of the Class A, Class B, and Class C shares permitted under the Original Order. Under the Multi-Class Distribution System, the only differences among the classes of shares of the same Fund will relate solely to: (a) the impact of the disproportionate payments made under the rule 12b–1 plans, the different transfer agency costs, if any, attributable to the various classes of shares, and any other expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order; (b) the fact that the classes will vote separately with respect to a Fund's rule 12b–1 plans, except as provided in condition 14, below; (c) the different exchange privileges of the classes of shares; (d) the designation of each class of shares of a Fund; and (e) the different conversion features of each class of shares.

4. Applicants request relief in addition to that granted by the Original Order, which remains in full force and effect. Each of the representations upon which the Original Order was based remains true and accurate, except that applicants have now implemented the distribution system permitted by the Original Order with respect to most of the existing series of the Trusts.

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[4] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[5] 17 CFR 240.9b–1 (1990).

[6] 17 CFR 200.30–3(a)(39) (1990).

Applicants' Legal Analysis

1. Applicants seek an exemption from: sections 18(f)(1) and 18(g) of the Act to the extent the proposed Multi-Class Distribution System may result in a senior security prohibited by section 18(f); section 18(i) of the Act to the extent that the different voting rights associated with the proposed Multi-Class Distribution System may be deemed to result in some classes having unequal voting rights with other classes of shares; and sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to the extent necessary or appropriate to permit the imposition of a contingent deferred sales charge ("CDSC") in connection with the redemption of certain classes of shares in the Multi-Class Distribution System, as described in the application for the Original Order.

Applicant's Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences among the classes of shares of the same Fund will relate solely to: (a) The impact of the disproportionate payments made under the rule 12b–1 plans, the different transfer agency costs, if any, attributable to the various classes of shares, and any other expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order; (b) the fact that the classes will vote separately with respect to a Fund's rule 12b–1 plans, except as provided in condition 14, below; (c) the different exchange privileges of the classes of shares; (d) the designation of each class of shares of the Fund; and (e) the different conversion features of each class of shares.

2. The Trustees of a particular Fund, including a majority of the independent Trustees, will approve the Multi-Class Distribution System prior to its implementation by such Fund. In addition, the Trustees of a particular Fund, including a majority of the independent Trustees, will approve the subsequent creation of any additional class of shares. The minutes of the meetings of the Trustees of each of the Funds regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Multi-Class Distribution System will reflect in detail the reasons for the Trustees' determination that the proposed Multi-Class Distribution System is in the best interests of both the Fund and its respective shareholders and such minutes will be available for inspection by the SEC staff.

3. On an ongoing basis, the Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the different classes of shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Colonial will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, Colonial at its own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The Trustees of the Funds will receive quarterly and annual statements concerning distribution and service expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or service of a particular class of shares will be used to justify any distribution or service fee charged to that class. Expenditures not related to the sale or service of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

5. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that distribution and service payments relating to any particular class of shares will be borne exclusively by that class and any incremental transfer agency costs relating to a particular class of shares will be borne exclusively by such class.

6. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the various classes have been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which has been filed as an exhibit to amendment No. 1 to this application, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by a Fund (which the Funds agree to make), will be available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.[1]

7. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among such classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (6) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (6) above. Applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

8. The prospectuses of the Funds will contain statements to the effect that salespersons and any other persons entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to different classes of shares.

[1] The Staff notes that SAS No. 44 of the AICPA has been superseded by SAS No. 70, which is effective for all auditors' reports dated after March 31, 1993.

9. Colonial will adopt compliance standards as to when shares of each class may appropriately be sold to particular investors. Applicants will require all persons selling shares of a Fund to agree to conform to such standards. Applicants' compliance standards will require all investors eligible to purchase Class C shares of a Fund offering such shares to invest in Class C, rather than shares of any other class.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Funds with respect to the Multi-Class Distribution System will be set forth in guidelines which will be furnished to the Trustees as part of the materials setting forth the duties and responsibilities of the Trustees.

11. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares (other than Class C) in every prospectus (other than a prospectus relating exclusively to Class C) through which such Fund's shares are offered, regardless of whether all classes of shares are offered through each prospectus. The prospectus for any class of shares of a Fund will identify the existence of all other classes of such Fund and, with the exception of a prospectus for Class C, will identify the persons eligible to purchase shares of such other classes. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement of sales literature describes the expenses or performance data applicable to one class of shares (other than Class C shares), it will disclose the expenses and/or performance data applicable to all other classes (other than Class C). Advertising materials reflecting the expenses or performance data for Class C shares will be available only to Class C eligible investors. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will separately present the different classes of shares (other than Class C).

12. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to their rule 12b–1 distribution or service plans in reliance on the exemptive order.

13. Any class of shares with a conversion feature ("Converting Class") will convert into another class ("Target Class") of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

14. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-Rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by Target Class shares under the plan, existing Converting Class shares will stop converting into Target Class shares unless the Converting Class shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Converting Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Converting Class shares for a new class ("New Converting Class"), identical to existing Converting Class shares in all material respects except that the New Converting Class will convert into the New Target Class. A New Target Class or New Converting Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of a New Target Class or New Converting Class shall be borne solely by Colonial. Converting Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Converting Class shares are disclosed in an effective registration statement.

15. Applicants will comply with the provisions of proposed rule 6c–10 under the Act (Investment Company Act Release No. 16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4853 Filed 3–2–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

February 25, 1993.

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:

Laser Technology, Inc.
Common Stock, $.01 Par Value (File No. 7–10252)
Preferred Income Management Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–10253)
Prospect Street High Income Portfolio, Inc.
Rights to Subscribe (File No. 7–10254)
Atlantis Group
Common Stock, $.10 Par Value (File No. 7–10255)
All American Target Term Trust, Inc.
Common Stock, $.001 Par Value (File No. 7–10256)
Alta Energy Corp.
Common Stock, $.01 Par Value (File No. 7–10257)
Hyperion 2005 Investment Grade Opportunity Term Trust, Inc.
Common Stock, $.001 Par Value (File No. 7–10258)
Intercapital California Insured Municipal Income
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10259)
Intercapital Insured Municipal Income
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10260)
C.H.I.C. By His, Inc.
Common Stock, No Par Value (File No. 7–10261)
Nuveen Premium Income Municipal Fund IV, Inc.

Common Stock, $.01 Par Value (File No. 7–10262)
Voyageur Arizona Municipal Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–10263)
Voyageur Florida Insured Municipal Income Fund
Common Stock, $.01 Par Value (File No. 7–10264)
Voyageur Minnesota Municipal Income Fund II, Inc.
Common Stock, $.01 Par Value (File No. 7–10265)
Citadel Holding Corp.
Rights to Subscribe (File No. 7–10266)
Berlitz International, Inc.
Common Stock, $.10 Par Value (File No. 7–10267)

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 March 18, 1993, 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. 93–4857 Filed 3–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19297; 812–7928]

Nations Fund Trust, et al.; Notice of Application

February 25, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Nations Fund Trust (formerly Nations Fund) (the "Trust"), Nations Fund, Inc. (formerly Hatteras Funds, Inc., d/b/a Nations Fund Portfolios), NationsBank of North Carolina, N.A. ("NationsBank"), and Funds Distributor, Inc. ("FDI") (formerly TBC Funds Distributor, Inc.).

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek a conditional exemption from the provisions of sections 18(f), 18(g), and 18(i) to the extent necessary to permit applicants to issue multiple classes of shares in the same portfolio.

FILING DATES: The application was filed on May 26, 1992, and amendments were filed on August 26, 1992, November 3, 1992, January 13, 1993 and February 23, 1993. By letter dated February 24, 1993, applicants' counsel stated that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 22, 1993, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: Nations Fund Trust and Nations Fund, Inc., One Exchange Place, 53 State Street, Boston, Massachusetts 02109; NationsBank of North Carolina, N.A., 101 South Tryon Street, Charlotte, North Carolina 28255; and Funds Distributor, Inc., Exchange Place, Boston, Massachusetts 02109–2873.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (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.

Applicants' Representations

1. Nations Fund Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. Nations Fund Trust is a series company presently consisting of 23 separate investment portfolios. Nineteen of the portfolios declare net investment income as a dividend on a daily basis and are hereinafter referred to, together with any future portfolios of any other Company (as defined below), as the "Daily Dividend Funds." The other four portfolios declare net investment income as a dividend on a basis other than daily, and are hereinafter referred to, together with any future portfolios of any other Company, as the "Non-Daily Dividend Funds."

2. Nations Fund, Inc. is a Maryland corporation registered under the Act as an open-end management investment company, and is a series company consisting of five separate investment portfolios. Three of the portfolios are Daily Dividend Funds, and two are Non-Daily Dividend Funds.

3. Applicants intend that the requested relief also apply to all open-end investment companies for which FDI acts or will act in the future as principal underwriter (collectively with Nations Fund Trust and Nations Fund, Inc., as the "Companies," and individually, a "Company").[1]

4. NationsBank serves as the investment adviser of Nations Fund Trust and Nations Fund, Inc. FDI serves as the principal underwriter of Nations Fund Trust and Nations Fund, Inc.

5. Nations Fund Trust and Nations Fund, Inc., as well as certain other investment companies, currently are permitted to offer three classes of shares representing interests in the same portfolio pursuant to a prior order (the "Existing Order"). *The Galaxy Fund*, Investment Company Act Release Nos. 18507 (Jan. 30, 1992) (notice) and 18558 (Feb. 19, 1992) (order). Once the requested order is issued, the Companies will rely on such requested order in lieu of the Existing Order. The requested order will not supersede or replace the Existing Order to the extent any other investment companies, including the Galaxy Fund, are relying on or will in the future rely on the Existing Order.

6. The Existing Order allows three classes of shares to be issued: (a) the 12b–1 class offered in connection with a plan adopted pursuant to rule 12b–1 under the Act (the "12b–1 Plan"); (b) the Non-12b–1 class offered in connection with a non-rule 12b–1

[1] Nations Fund Trust and Nations Fund, Inc. are the only two investment companies distributed by FDI that currently intend to rely on any order issued in connection with the requested relief. Applicants request that any existing investment companies that use FDI as its principal underwriter and have not signed the application be permitted to reply on any order granting the requested relief so long as they determine to issue multiple classes of shares in accordance with the representations and conditions of the application.

administrative plan (the "Non-12b–1 Plan," and, collectively with the 12b–1 Plan, the "Plans"); and (c) the Trust class. The 12b–1 class and Non-12b–1 class may incur the additional expense of fees paid to financial institutions that have entered into agreements ("Plan Agreements") with a Company to provide administrative services to certain customers, and certain additional transfer agency expenditures. The 12b–1 class also may be subject to additional distribution expenditures made pursuant to the respective rule 12b–1 Plan. Financial institutions which have entered into Plan Agreements with a Company or such Company's distributor to provide administrative support services to their customers with respect to the 12b–1 class or Non-12b–1 class are referred to herein as "Organizations." The Trust class incurs no additional expenses.

7. Applicants request an order to permit the Companies to offer multiple classes of shares representing interests in the same portfolio. Under the proposed arrangement, each share of a portfolio of a Company would be identical in all respects to all other shares except for class designation, allocation of certain expenses by class ("Class Expenses"), voting rights, exchange privileges, sales loads, of certain of the classes, and conversion privileges.

8. Because of the expenses that may be borne by each class of shares of a portfolio of a Company, the net income of and dividends payable to each class may be different from the net income of and dividends payable to the other classes of such portfolio. Dividends paid to each class of shares would, however, be declared and paid on the same days and at the same time, and, except as noted with respect to Class Expenses, would be determined in the same manner and paid in the same amounts.

9. Shares of certain classes ("Class B") could automatically convert into shares of another class ("Class A") approximately five years after the purchase of the Class B shares. Class A shares will in all cases be subject to aggregate lower asset-based sales charges and/or service fees, if any, than Class B shares. Shares purchased through the reinvestment of dividends and other distributions paid in respect to Class B shares will be Class B shares. Such shares will convert to Class A shares on the earlier of: (a) Five years from the date of such reinvestment purchase, or (b) the conversion date of the most recently purchased Class B shares that were not acquired through the reinvestment of dividends or other distributions. Thus, for example, if an investor makes a one-time purchase of Class B shares and subsequently acquires additional Class B shares only through reinvestment of dividends and other distributions, all Class B shares, including Class B shares acquired through reinvestment, will convert to Class A shares five years after the original purchase date.

10. The conversion of the Class B into Class A shares would be subject to the availability of an opinion of counsel or Internal Revenue Service private letter ruling to the effect that the conversion of the Class B shares does not constitute a taxable event under Federal income tax law. The proposed conversion may be suspended if such a ruling or opinion is not available. In that event, no further conversions would occur and the Class B shares might be subject to a higher distribution and administrative support services fee for an indefinite period.

11. All outstanding shares representing interests in the Non-Daily Dividend Funds will bear the same portfolio expenses, which will first be allocated *pro rata* to each class on the basis of the relative net asset value of the respective class, and then further allocated on a per share basis within the class, except that each class will bear its own respective Class Expenses.

12. With respect to the Daily Dividend Funds, the net asset value of all outstanding shares representing interests in the same fund will be computed on the same days and at the same time by adding the value of all securities and other assets belonging to such fund, subtracting the liabilities charged to such fund, and dividing the result by the same number of outstanding shares. The gross income of such fund would in effect be calculated on a *pro rata* basis to each outstanding share in such fund regardless of class, and all expenses incurred by such fund would be borne on a *pro rata* basis by such outstanding shares, except for Class Expenses applicable to each class of shares. The Daily Dividend Funds will take certain steps as detailed in condition 18 below to ensure that the net asset value per share of each class of shares of a Daily Dividend Fund does not deviate from the net asset value per share of the other classes in the fund.

13. Shareholders will generally be limited to exchanging shares for the same or similar class of shares of another portfolio within a single group of investment companies, as such term is defined in rule 11a–3. Any exceptions to such policy will be disclosed in the appropriate prospectuses. The Companies' exchange policies will in all events comply with rule 11a–3.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed issuance and sale of any of the classes of shares might be deemed to result in a "senior security" within the meaning of section 18(g) and prohibited by section 18(f)(1) and to violate the equal voting provisions of section 18(i). Applicants assert that the proposed allocation of expenses and voting rights in the manner described is equitable and would not discriminate against any group of shareholders. Applicants argue that investors purchasing shares and receiving the services provided under a plan would bear the costs associated with such services, but would also enjoy shareholder voting rights with respect to matters affecting the Plan. Applicants also argue that investors purchasing shares not offered in connection with a Plan would not bear those expenses, receive the service benefits of such plans, or enjoy those voting rights.

2. Applicants assert that the proposed arrangement does not raise any of the concerns which section 18 is intended to redress. It does not involve borrowings, affect a Company's existing assets or reserves, or increase the speculative character of the shares of a Company. Applicants further state that mutuality of risk is preserved because all shares of a Company will be redeemable at all times. Applicants believe that, because no class of shares will have liquidation or distribution preference with respect to particular assets, and because no class will be protected by any reserve or other account, investors will not be given misleading impressions as to the safety or risk of the shares. In addition, applicants assert that a Company's capital structure will not enable insiders to manipulate the expenses and profits since the capital structure is not organized in a pyramid fashion and since all expenses and profits of a Company, other than Class Expenses, will be borne *pro rata* by all shares of each portfolio of a Company, irrespective of class.

Applicants' Conditions: Applicants agree that the following conditions may be imposed in any order of the SEC granting the requested relief:

1. Each class of shares representing interests in the same portfolio of a Company will be identical in all respects, except for differences related to:

(a) The method of financing certain Class Expenses, which are limited to (i) transfer agent fees identified by the transfer agent as being attributable to a specific class of shares; (ii) printing and

postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, reports, and proxies to current shareholders of a specific class or to regulatory agencies with respect to a specific class of shares; (iii) blue sky registration or qualification fees incurred by a class of shares; (iv) SEC registrations fees incurred by a class of shares; (v) the expense of administrative personnel and services (including, without limitation, those of a portfolio accountant, custodian or dividend paying agent charged with calculating net asset values or determining or paying dividends) as required to support the shareholders of a specific class of shares; (vi) different levels of 12b–1 and/or non-12b–1 fees and expenses incurred by a class of shares ("Plan Payments"); (vii) litigation or other legal expenses relating solely to one class of shares; (viii) fees of Trustees [2] incurred as a result of issues relating to one class of shares; and (ix) independent accountants' fees relating solely to one class of shares;

(b) voting rights of the classes with respect to the Plans;

(c) the different exchange privileges, if any, of such classes as described in the prospectuses (and statements of additional information) of the portfolios and consistent with any order granted pursuant to this application.

(d) class designation differences; and

(e) the conversion of shares of one class to shares of a second class approximately five years after the purchase of the shares of the first class, which classes differ with respect to the distribution services and administrative support fees payable by such classes of shares.

Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the SEC pursuant to an amended order.

2. The Trustees of a Company, including a majority of the independent Trustees, will approve the creation of additional classes of shares from time to time by an affirmative vote prior to the creation of any such class. The minutes of the meetings of the Trustees regarding the deliberations of the Trustees with respect to the approvals necessary to create any additional class of shares will reflect in detail the reasons for the Trustees' determination that the creation is in the best interests of both the Company involved and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Trustees of a Company, including a majority of the Trustees who are not interested persons of the Company. Any person authorized to direct the allocation and disposition of monies paid or payable by the Company to meet Class Expenses shall provide to the Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the Trustees of a Company, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the portfolios for the existence of any material conflicts between the interests of the classes of shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. A Company's adviser and distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, a Company's adviser and distributor, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

5. Any Non–12b–1 Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through 12b–1(f) as if the expenditures made thereunder were subject to rule 12b–1, except that holders of Non–12b–1 shares will not receive the voting rights specified in rule 12b–1. In evaluating any Non–12b–1 Plan, the Trustees of a Company will specifically consider whether (a) the Plan is in the best interest of the applicable class of shares and their respective shareholders, (b) the services to be performed pursuant to the Plan are required for the operation of the applicable class of shares, (c) the Organizations can provide services at least equal in nature and quality to similar services provided by others, including the Company, and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

6. Each agreement entered into pursuant to a Plan will contain a representation by the Organization that any compensation payable to the Organization in connection with the investment of its customers' assets in a portfolio (a) will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the Organization.

7. Each agreement entered into pursuant to a Plan will provide that, in the event an issue pertaining to the Plan is submitted for shareholder approval, the Organization providing services will vote any shares held for its own account in the same proportion as the vote of those shares held for its customers' accounts.

8. The Trustees of a Company will receive quarterly and annual statements concerning Plan Payments (including, in the case of 12b–1 Plans, expenditures relating to distribution) complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale (in the case of 12b–1 shares) or servicing of a particular class of shares will be used to justify any distribution (in the case of 12b–1 shares) or servicing fee charged to that class. Expenditures not related to a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

9. Dividends or other distributions paid by a Company with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in proportion to each class of shares' respective net asset value, except that any Plan Payments and other Class Expenses relating to a particular class of shares will be borne exclusively by the applicable class.

10. The methodology and procedures for calculating the net asset values, dividends and distribution of the classes of shares and the proper allocation of expenses between those classes have been reviewed by an expert (the "Expert") who has rendered a report to Applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to Applicants that the calculations and allocations are being made properly.

[2] As used herein, "Trustees" refers to trustees of a trust or directors of a corporation, as appropriate.

The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by a Company (which the Company agrees to provide), will be available for inspection by the Commission staff, upon the written request to the Company for such work papers, by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System," as defined and described in SAS No. 44 of the AICPA, and the ongoing reports filed after March 31, 1993, will be "Reports on Policies and Procedures Placed in Operations and Tests of Operating Effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

11. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset values, dividends and distributions of the classes of shares and the proper allocation of expenses between such classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition (10) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (10) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

12. The prospectus for each portfolio with more than one class will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares may receive different compensation for selling or servicing one particular class of shares over another class in the same portfolio.

13. FDI will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares to agree to conform to such standards.

14. The conditions pursuant to which the order is granted and the duties and responsibilities of the Trustees of a Company with respect to the Plans and related agreements will be set forth in guidelines which will be furnished to the Trustees of the Company.

15. Each portfolio will disclose the respective expenses, performance data, distribution arrangements, services, fees, transfer agency expenses, sales loads, deferred sales loads, conversion features, and exchange privileges applicable to each class of shares of such portfolio in every prospectus, regardless of whether all classes of shares in the portfolio are offered through the prospectus. Each portfolio will disclose the respective expenses and performance data applicable to all class of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares in a portfolio, it will also disclose the respective expenses and/or performance data applicable to all classes of shares in each portfolio. The information provided by a Company for publication in any newspaper or similar listing of each portfolio's net asset value and public offering price will present each class of shares separately.

16. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

17. If a portfolio of a Company implements any amendments to its 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a Non-12b–1 Plan) that would increase materially the amount that may be borne by the Class A shares under the plan, existing Class B shares will stop converting into Class A unless the Class B shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Class B shares are exchanged or converted into a new class of shares ("New Class A"), identical in all material respects to Class A as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Class A. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Class B shares for a new class ("New Class B"), identical to existing Class B shares in all material respects except that New Class B will convert into New Class A. New Class A or New Class B may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Class A or New Class B shall be borne solely by the adviser and the distributor of a Company. Class B shares sold after the implementation of the proposal may convert to Class A shares subject to the higher maximum amount, provided that the material features of the Class A plan and the relationship of such plan to the Class B shares are disclosed in an effective registration statement.

18. To ensure that the net asset value per share of each class of shares of a Daily Dividend Fund does not deviate from the net asset value per share of the other classes as a result of variations in net income among the classes from day to day, no Daily Dividend Fund class will on any day bear any accrued Class Expenses that would cause the accrued expenses of such class for such day to exceed its allocated gross income. To accomplish this, each Daily Dividend Fund may seek to obtain undertakings from its service providers stating that, if necessary to prevent accrued Class Expenses of any class from exceeding the allocated gross income of such class on any given day, they will waive some or all of the payments to which they otherwise would have been entitled. If such waivers are not obtained or they are not sufficient to prevent accrued Class Expenses for the day from exceeding a class's gross income for the day, the investment adviser and/or principal underwriter will waive their fees up to the amount by which such day's accrued Class Expenses exceed a class's gross income. If after giving effect to such waivers by service providers, if any, and by the investment adviser and principal underwriter, Class Expenses for the day would nevertheless exceed a class's gross income, the investment adviser and/or principal underwriter will, within five business days, reimburse the Daily Dividend Fund in such amount as may be necessary to prevent such Class Expenses from exceeding a class's gross income for the day. Fees and expenses waived by a service provider or reimbursed to the Fund by the investment adviser and/or principal underwriter will not be

carried forward or recouped at a future date.

19. Applicants acknowledge that the grant of the order requested by this application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that a Company may make pursuant to a Plan in reliance on the order.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4855 Filed 3–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19296; 812–8158]

Oppenheimer Value Stock Fund, et al.; Notice of Application

February 25, 1993.

AGENCY: Securities and Exchange Commission "(SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Oppenheimer Value Stock Fund ("Value Stock"), a series of Oppenheimer Integrity Funds, Oppenheimer Blue Chip Fund ("Blue Chip," and together with Value Stock, the "Funds"), and Massachusetts Mutual Life Insurance Company ("MassMutual").

RELEVANT ACT SECTIONS: Order requested under section 17(b) that would grant an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order to permit Value Stock to acquire substantially all of the assets of Blue Chip in exchange solely for shares of Value Stock, notwithstanding the fact MassMutual (i) controls the investment adviser for both Value Stock and Blue Chip, and (ii) owns more than 25% of the outstanding shares of Value Stock.

FILING DATE: The application was filed on November 12, 1992, and amended on January 26, 1993 and February 25, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 22, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Oppenheimer Value Stock Fund and Oppenheimer Blue Chip Fund, c/o Oppenheimer Management Corporation, Two World Trade Center, Suite 3400, New York, New York 10048–0203; Massachusetts Mutual Life Insurance Company, 1295 State Street, Springfield, Massachusetts 01111.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (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.

Applicants' Representations

1. Blue Chip and Oppenheimer Integrity Funds, of which Value Stock is a series, are each open-end diversified management investment companies organized as Massachusetts business trusts and registered under the Act.

2. Oppenheimer Management Corporation ("OMC") is the investment adviser to both Blue Chip and Value Stock. MassMutual is the sub-adviser to Value Stock, and owns at least 50% of the outstanding voting securities of Value Stock. OMC is a wholly-owned subsidiary of Oppenheimer Acquisition Corporation, a holding company controlled by MassMutual.

3. Value Stock proposes to acquire substantially all of the assets of Blue Chip in exchange solely for shares of Value Stock. At a meeting held August 25, 1992, the Board of Trustees of Blue Chip unanimously adopted and recommended to the shareholders of Blue Chip that they approve an Agreement and Plan of Reorganization (the "Plan") under which: (a) Substantially all of the assets of Blue Chip would be exchanged at net asset value for shares of Value Stock, (b) such shares would be distributed *pro rata* among the shareholders of Blue Chip, and (c) Blue Chip would be dissolved and liquidated and its registration under the Act would be terminated within one year after the closing.

4. The reorganization has three conditions: (a) MassMutual, whose current investment in Value Stock is approximately $40 million, agrees to retain at least 90% of such investment in Value Stock for at least two years following the reorganization; (b) the Funds will receive an opinion of independent auditors to the effect that the Plan constitutes a tax-free event pursuant to the Internal Revenue Code of 1986 and the regulations thereunder; and (c) applicants must receive a clearance letter from the Federal Trade Commission pursuant to the premerger filing requirements of the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976.

5. Applicants have set forth each Fund's expense ratios for the last six years, and represent that they believe that Blue Chip's shareholders will benefit from the reorganization. Applicants have also set forth each Fund's annual total return for the last one year, five years, and from the commencement of operations, and these figures show that Value Stock has earned a higher return in all cases. The management fees and 12b–1 fees for each Fund have also been set forth, and applicants do not believe that Blue Chip will pay higher fees as a result of the reorganization.

6. Each Fund will share equally the cost of obtaining an opinion of counsel concerning the tax-free nature of the Plan, and will share equally the costs of printing and mailing the proxies and proxy statements. Other out-of-pocket expenses, including legal, accounting, and transfer agent expenses, will be borne by the respective Fund. The costs of all expenses associated with the Plan are estimated to be $20,000. If Blue Chip must bear expenses of $20,000, such expenses would approximate 0.1% of its total assets, and equate to a cost of $.017 per share; if Value Stock must bear expenses of $20,000, such expenses would approximate .04% of its total assets, and equate to a cost of $.005 per share.

Legal Analysis

1. Section 17(a) generally prohibits the sale of securities or property to a registered investment company by an affiliated person or by an affiliated person of an affiliated person of such company. Blue Chip and Value Stock may each be deemed to be an affiliated person of the other, and therefore subject to the proscriptions set forth in section 17(a). MassMutual, which indirectly owns 100% of the investment adviser of each Fund, may be deemed to control each Fund. If so, the Funds would be under common control and, under section 2(a)(3)(C), affiliated persons of each other. MassMutual also is presumed to control Value Stock by reason of its stock ownership. Section 2(a)(9) provides in relevant part that

there is a rebuttable presumption of control when a person owns more than 25% of the voting securities of a company, and applicants represent that MassMutual owns at least 50% of the shares of Value Stock. In addition, because MassMutual owns more than 5% of the shares of Value Stock, MassMutual is an affiliated person of Value Stock pursuant to section 2(a)(3)(A).

2. Rule 17a–8 under the Act grants an exemption from section 17(a) for reorganizations among registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. The proposed reorganization would be exempt from the provisions of section 17(a) by virtue of rule 17a–8 but for the fact that MassMutual beneficially owns 5% or more of the outstanding shares of Value Stock and indirectly owns 100% of the investment adviser for both Funds. Although the nature of the affiliations precludes applicants from relying on the exemption rule 17a–8 affords, applicants represent that the boards of trustees of the Funds have made the findings required by rule 17a–8. The terms of the Plan, including the consideration to be received by Blue Chip, have been reviewed and approved by the trustees of Blue Chip and Value Stock, including the trustees who are not "interested persons" as defined in the Act, and the trustees have concluded that the reorganization is in the best interests of the shareholders of both Blue Chip and Value Stock and will not result in the dilution of the interest of any of the existing shareholders of either Blue Chip or Value Stock. These findings and the bases therefore will be recorded fully in the minute books of Blue Chip and Value Stock.

3. Applicants assert that the policy that underlies rule 17a-8 would not prohibit reorganizations by and among affiliated persons where no person responsible for evaluating and approving the transaction would have an interest in improperly influencing the terms thereof. Applicants believe that the reorganization is consistent with the policies and purposes of rule 17a-8.

4. Applicants assert that the SEC has indicated that section 17(a) is designed to protect investors from purchase or sale transactions when a party has both the ability and pecuniary incentive to influence the actions of the investment company. Applicants represent that MassMutual's pecuniary interest in Value Stock has increased and further diversified Value Stock's net assets, and possibly reduced its expense ratios. Therefore, MassMutual's pecuniary interest in Value Stock is designed to foster the purposes of the Act and benefit existing shareholders. Applicants believe that it is reasonable to conclude that MassMutual does not have the pecuniary incentive to influence the actions of these investment companies.

5. Section 17(b) of the Act provides that, notwithstanding section 17(a), any person may file an application for an order exempting a proposed transaction and the SEC shall issue such order if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

6. Applicants submit that they have satisfied the requirements of section 17(b). The trustees of Blue Chip, including the trustees who are not "interested persons" as defined in the Act, considered, among other things, the proposed management, advisory and distribution arrangements, the continuity of Blue Chip's investment policies and objectives, and the impact of the reorganizations on expenses and pro forma expense ratios. Applicants submit that the terms of the reorganization and the consideration to be paid or received are fair and reasonable and do not involve overreaching by any person. Applicants assert that the proposed reorganization will be consistent with the policies of each of the Funds, and are consistent with the general purposes of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4854 Filed 3–2–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

February 25, 1993.

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:

LTV Corporation

15% Reset Notes due 1/15/2000; 9¼% Sinking Fund Debentures due 2/1/1997; 11% Subordinated Sinking Fund Debentures due 7/15/2007; 14% Sinking Fund Debentures due 8/15/2004; Exchangeable Variable Rate Subordinated Notes due 8/15/1995; 10⅜% Reset Notes due 3/15/1999; 5% Subordinated Sinking Fund Debentures due 1/15/1998; 7⅞% Springing Senior Subordinated Reset Notes due 4/1/1998; 11½% Springing Senior Subordinated Reset Notes due 3/15/1997; 8¾% Springing Reset Notes 6/1/1998; 13⅞% Sinking Fund Debentures due 12/1/2002 (File No. 7–10251)

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 March 18, 1993, 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 applications are 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. 93–4858 Filed 3–2–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31914; File No. SR–PTC–92–14]

Self-Regulatory Organizations; Participants Trust Company; Order Approving on an Accelerated Basis Proposed Rule Change Relating to the Designation by PTC of Certain Securities Guaranteed by the United States Department of Veterans Affairs as Eligible Securities

February 24, 1993.

I. Introduction.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),[1] the Participants Trust Company ("PTC") has filed a proposed rule change with the Securities and Exchange Commission ("Commission") extending PTC's authority to accept certain securities guaranteed by the United States Department of Veterans Affairs ("VA securities") as securities eligible for deposit at PTC. On February 5, 1993, notice of the proposed rule change was published in the **Federal Register** to solicit comments from interested persons.[2] To date, no comments have been received. As discussed below, the Commission is approving PTC's proposal on an accelerated basis.[3]

II. Description of the Proposal

The proposed rule change will allow PTC to continue to accept certain securities guaranteed by the Veterans Administration ("VA")[4] as eligible for deposit with PTC under Article I, Rule 2 of PTC's rules.

The Commission approved a proposed rule change allowing PTC to accept VA securities as eligible for deposit at PTC through December 31, 1992[5] pursuant to the then current authorizing legislation which expired by its terms on December 31, 1992. The VA's authority to issue guaranteed securities has been extended until December 31, 1995.[6] PTC now desires to make its designation of VA securities as eligible for deposit in PTC permanent, with the caveat that those securities issued by the VA will be eligible at PTC only if they are guaranteed by the United States Government. In addition, should the VA's authority to issue securities with such a guarantee cease, the VA securities currently in PTC shall remain depository eligible securities at PTC.

The VA plans to issue through a trust approximately three or four REMIC issues per year.[7] Each issue will be comprised of a series of tranches each of which constitute a "security" within the PTC definition of "security." The anticipated total face value of each securities issuance is approximately $350,000,000 to $500,000,000. On the closing for issuance of securities under this program, the issuing trust will receive an opinion of the General Counsel of the VA to the effect that the VA's obligations under the VA guarantee constitute absolute and unconditional general obligations of the United States, for which the full faith and credit of the United States is pledged.

PTC's current system is capable of accommodating the VA securities. With respect to processing, because the VA securities are comparable to GNMAs, no substantive operational changes need to be made to PTC's computer processing system. For example, it is expected that there will be daily settlement of the VA securities. Currently, a substantial portion of GNMAs settle daily. There will be a single monthly payment date for principal and interest ("P&I") on the VA securities. GNMA is currently paying on the 15th of the month and PTC distributes P&I on payment date plus one. GNMA IIs currently pay on the 20th of the month, and PTC pays on that date. Therefore, PTC's system is capable of making distributions of P&I on the same day as payment date. The VA securities will be registered in the name of PTC's nominee, "MBSCC & Co.," and the physical certificates will be held in custody for PTC by a custodian bank, as is the case for GNMA securities.

The volume of the VA securities to be deposited at PTC will continue to be modest compared to the total face amount of GNMA securities now on deposit at PTC[8] and is expected to have a relatively modest effect on PTC's overall transaction volume. P&I distributions also continue to be modest compared to the multi-billion dollar P&I distributions for GNMA Is. Accordingly, PTC has stated that the VA securities will have no meaningful impact on the capacity of PTC's transaction processing or P&I disbursement facilities.

The acceptance for deposit of the VA securities as eligible securities will not require any change in PTC's Rules or affect the rights of its participants. As an eligible security, functionally and legally comparable to GNMA securities, PTC's Rules and Procedures are applicable, without change, and govern PTC's and its participants' rights and obligations with respect to the VA securities. Finally, the fees imposed by PTC for providing depository services for VA securities will be the same as those in effect for GNMAs.

III. Discussion

Section 17A(b)(3)(F) of the Act[9] requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that PTC's proposal to designate VA guaranteed securities as eligible securities for deposit with PTC is consistent with this goal.

PTC has gained almost five years of experience with GNMAs. VA securities share many of the general attributes of GNMAs.[10] The Commission believes that PTC's experience with GNMAs serves as a good foundation for continuing to handle REMICs. Therefore, the Commission believes that this proposal furthers the perfection of the national system for the clearance and settlement of securities transactions because VA REMICs will be processed within a centralized, electronic book-entry environment instead of a decentralized, manually intensive physical settlement environment.

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 filing in the **Federal Register**. Because the next issuance of VA securities will occur on February 25, 1993, PTC has requested that the Commission approve the proposal prior to that date. The Commission believes that there is good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. Such accelerated approval will permit PTC to make eligible for deposit at PTC the REMICs that the VA plans to issue on February 25, 1993. In addition, a notice and order granting accelerated approval of a similar proposed rule change (SR-PTC-92-07) designating VA securities as PTC eligible was published in the Federal Register on June 19, 1992.[11]

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[1] 15 U.S.C. § 78s(b)(1).

[2] Securities Exchange Act Release No. 31804 (February 1, 1993), 58 FR 7284.

[3] The staff of the Board of Governors of the Federal Reserve System ("Board of Governors") has stated that it believes that the proposed rule change is consistent with the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and therefore has no objection to accelerated approval. Telephone conversation between William R. Stanley, Senior Trust Analyst, Board of Governors, and Francois-Ihor Mazur, Staff Attorney, Division of Market Regulation, Commission (February 9, 1993).

[4] These securities are issued and guaranteed pursuant to 38 U.S.C. § 3720 h (1) and (2), as amended by P.L. 102-547, enacted on October 28, 1992.

[5] SR-PTC-92-07, Securities Exchange Act Release No. 30792 (June 19, 1992), 57 FR 27495.

[6] *See supra* note 4.

[7] A REMIC is a real estate mortgage investment conduit, a pass-through vehicle created under the Tax Reform Act of 1986 to issue multiclass mortgage-backed securities.

[8] PTC currently has on deposit approximately $680 billion of GNMA securities. The total face value of VA securities already on deposit at PTC is approximately $1.6 billion.

[9] 15 U.S.C. § 78q-1(b)(3)(F).

[10] *E.g.*, both are issued in physical form and are backed by the full faith and credit of the U.S. Government.

[11] The proposal was approved through December 31, 1992. Securities Exchange Act Release No. 30792 (June 10, 1992), 57 FR 27495. No comments were received with respect to SR-PTC-92-07.

IV. Conclusion

For the reasons stated above, the Commission finds that PTC's proposal is consistent with section 17A of the Act. The Commission also finds good cause for approving the proposal prior to the thirtieth day after publication in the **Federal Register.**

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that PTC's proposed rule change (SR–PTC–92–14) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–4856 Filed 3–2–93; 8:45 am]

BILLING CODE 8010–01–M

[12] 15 U.S.C 78s(b)(2).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

February 25, 1992.

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:

Carr Realty Corporation
Common Stock, $.01 Par Value (File No. 7–10268)
IRT Property Company
Common Stock, $1 Par Value (File No. 7–10269)
Digicon, Inc.
Common Stock, $.01 Par Value (File No. 7–10270)
Preferred Income Management Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–10271)
Rymer Foods, Inc.
Common Stock, $1 Par Value (File No. 7–10272)
Prudential Realty Trust
Capital Shares of Beneficial Interest, $0.01 Par Value (File No. 7–10273)
Puerto Rican Cement Company, Inc.
Common Stock, $1 Par Value (File No. 7–10274)
Raytech Corporation
Common Stock, $1 Par Value (File No. 7–10275)
Real Estate Investment Trust of California
Shares of Beneficial Interest, No Par Value (File No. 7–10276)
Voyageur Florida Insured Municipal Income Fund
Common Stock, $.01 Par Value (File No. 7–10277)
Voyageur Minnesota Municipal Income Fund II, Inc.
Common Stock, $.01 Par Value (File No. 7–10278)
Voyageur Arizona Municipal Income Fund
Common Stock, $.01 Par Value (File No. 7–10279)
Pride Companies L.P.
Common Units (File No. 7–10280)
Proler International Corporation
Common Stock, $1 Par Value (File No. 7–10281)
San Juan Basin Royalty Trust
Common Shares of Beneficial Interest (File No. 7–10282)
Hyperion 2005 Investment Grade Opportunity Term Trust, Inc.
Common Stock, $.001 Par Value (File No. 7–10283)
Intercapital California Insured Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10284)
Intercapital Insured Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10285)
Salomon, Inc.
Dep. Shares 3.08 Pc Cum Pfd Stock (File No. 7–10286)
Nuveen Premium Income Municipal Fund 4, Inc.
Common Stock, $.01 Par Value (File No. 7–10287)
Redwood Empire Bancorp
7.80 Non Cum Conv. Pfd Stock, No Par Value (File No. 7–10288)
Texas Utilities Electric Co.
Depositary Shares 8.20 Cum Pfd Stock, Par Value (File No. 7–10289)
Chic by H.I.S., Inc.
Common Stock, $.01 Par Value (File No. 7–10290)

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 March 18, 1993, 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 applications are 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. 93–4860 Filed 3–2–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1767]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511.

SUMMARY: Section 38 of the Arms Export Control Act (22 U.S.C. 2778) authorizes the President to control the export and import of defense articles and defense services and to promulgate implementing regulations thereunder. The President delegated this statutory authority to the Secretary of State. Through further delegations, the regulations, the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130), are primarily administered by the Director of the Office of Defense Trade Controls (DTC) within the Bureau of Politico-Military Affairs. The information collection requirements listed are associated with the registration, reporting, and issuance of licenses for the export and import of items on the United States Munitions List. The following summarizes the information collection proposals submitted to OMB:

1. Type of request—Reinstatement.
Originating office—Bureau of Politico-Military Affairs.
Title of information collection—Application for Registration.
Form No.—DSP–9.
Frequency—Every one, two or five years.
Respondents—Manufacturers and exporters of items on the U.S. Munitions List.
Estimated number of respondents—3,000.
Average number of responses per respondent—.33.
Average hours per response—1 hour.
Total estimated burden hours—983.
2. Type of request—Reinstatement.
Originating office—Bureau of Politico-Military Affairs.
Title of information collection—Authority to Export Defense Articles

& Defense Services Sold Under the Foreign Military Sales Program.
Form No.—DSP–94.
Frequency—Biennially.
Respondents—Exporters of U.S. Munitions List items covered under the Foreign Military Sales Program.
Estimated number of respondents—250.
Average number of responses per respondent—20.
Average hours per response—½ hour.
Total estimated burden hours—2,500.
3. Type of request—Reinstatement.
Originating office—Bureau of Politico-Military Affairs.
Title of information collection—Non-transfer and Use Certificate.
Form No.—DSP–83.
Frequency—Every three years.
Respondents—Exporters of significant military equipment and foreign end-users.
Estimated number of respondents—4,500.
Average number of responses per respondent—7.57.
Average hours per response—½ hour.
Total estimated burden hours—17,025.
4. Type of request—Existing collection without an OMB Number.
Originating office—Bureau of Politico-Military Affairs.
Title of information collection—Request for Approval of Manufacturing License and Technical Assistance Agreements.
Frequency—On occasion.
Respondents—Exporters of U.S. technology.
Estimated number of respondents—4,500.
Average number of responses per respondent—.22.
Average hours per response—6 hours.
Total estimated burden hours—6,000.
5. Type of request—Reinstatement.
Originating office—Bureau of Politico-Military Affairs.
Title of information collection—Statement of Political Contributions, Fees or Commissions in Connection with the Sale of Defense Articles or Services.
Frequency—On occasion.
Respondents—Exporters of Defense Articles or Services.
Estimated number of respondents—3,000.
Average number of responses per respondent—.04.
Average hours per response—8 hours.
Total estimated burden hours—952.

Section 3504(h) of Public Law 96–511 was addressed in the regulation published in the Federal Register (49 FR 49671).

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Lin Liu (202) 395–7340.

Dated: February 11, 1993.

Jerome F. Tolson, Jr.,

Acting Assistant Secretary for Administration.

[FR Doc. 93–4798 Filed 3–2–93; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets 48426 and 48437; Order 93–2–44]

Applications of Continental Air Transport Co. for Issuance of New Certificate Authority

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Omni fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate, overseas, and foreign charter air transportation of property and mail.

DATES: Persons wishing to file objections should do so no later than March 8, 1993.

ADDRESSES: Objections and answers to objections should be filed in Dockets 48426 and 48437 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: February 25, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–4873 Filed 3–2–93; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

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's Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on March 24, 1993 at 1 p.m. Arrange for oral presentations by March 10, 1993.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, suite 801, 1400 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR–1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

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 Aviation Rulemaking Advisory Committee to be held on March 24, 1993, at the General Aviation Manufacturers Association, suite 801, 1400 K Street, NW., Washington, DC 20005. The agenda for the meeting will include:

- Opening Remarks
- Review of Action Items
- Final Report of the International Certification Procedures Harmonization Working Group
- Reports of other working groups
- Discussion of harmonization and working group schedules

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by March 10, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT." Anyone who wishes to obtain a copy of the International Certification Procedures Harmonization Working Group report may contact Mrs. Jeanne Trapani, FAA Office of Rulemaking, ARM–208, on (202) 267–7624 or fax (202) 267–5075.

Issued in Washington, DC, on February 24, 1993.

William J. Sullivan,

Assistant Executive Director for Aircraft Certification Procedures, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–4877 Filed 3–2–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 93–10]

Transfer of Interstate Maintenance Program Funds

AGENCY: Federal Highway Administration (FHEA), DOT.

ACTION: Interim policy statement.

SUMMARY: This interim policy statement establishes the FHWA's policy for addressing the interstate maintenance program funds transfer provisions of section 119(f)(1) of title 23, United States Code (U.S.C.), which was amended by Section 1009 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. By publishing this interim policy statement the FHWA seeks to advise States of the criteria the agency will use in evaluating a State's request to transfer interstate maintenance funds, while providing the opportunity for public comment prior to issuing a final policy statement.

DATES: Comments must be received on or before May 3, 1993.

ADDRESSES: Submit written, signed comments concerning this policy statement to FHWA Docket No. 93–10, Federal Highway Administration, room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. e.t., Monday through Friday, except legal Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Louis Papet, Chief, Pavement Division, (202) 366–1324, or Mrs. Vivian Philbin, Attorney Advisor, Office of Chief Counsel, General Law Branch, (202) 366–0780, Federal Highway Administration, 400 Seventh Street SW., Washington DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Section 1009 of the ISTEA amended 23 U.S.C. 119 by replacing "Interstate System resurfacing" with the "Interstate maintenance program" (IM) Public Law No. 102–240, section 1009, 105 Stat. 1914, 1933. Section 1009 also established additional constraints affecting the States' options for transferring a portion of these funds to the States' apportionments for other Federal-aid programs.

Section 119(f)(1), as amended, allows the transfer of IM funds to other Federal-aid highway programs provided the State certifies to the Secretary that: (1) Any part of the IM funds are in excess of the needs of the State for resurfacing, restoring, or rehabilitating Interstate System routes and (2) that it is adequately maintaining the Interstate System, and the Secretary accepts such certification. Notwithstanding section 119(f)(1), section 119((f)(2), as amended, allows the States to "unconditionally" transfer up to 20 percent of unobligated IM apportioned funds based solely on the request of the States.

Further, section 1009(c)(2) of the ISTEA requires the Secretary to develop and make available to the States criteria for determining what constitutes adequate maintenance of the Interstate System for the purposes of section 119(f)(1) of title 23, United States Code. The criteria for determining what constitutes adequate maintenance, which are included in this policy, are associated with only the transfer of IM funds and are not related to the State's responsibility to properly maintain projects constructed with Federal-aid funds outlined in 23 U.S.C. 116, Maintenance.

In developing the specific criteria, the FHWA believes that transfers of apportioned IM funds specifically earmarked for Interstate maintenance to other designated programs should only be allowed when the Interstate System routes are in a physical condition to perform at or near the level for which they were designed and intended.

Pavement and bridge activities constitute the majority of IM eligible activities. The FHWA has focused on pavement and bridge condition indicators as determining factors for eligibility to transfer IM funds.

The FHWA has selected Interstate pavement condition indicators (surface roughness, rutting, and faulting) and bridge condition indicators (bridge deck condition and the need for load posting) for evaluating State's requests to transfer IM funds under the provisions of 23 U.S.C. 119(f)(1). These indicators are collected and used by the States in evaluating the condition of the Interstate for their own management purposes. They are generally incorporated into State pavement and bridge management systems and the national bridge inventory and highway performance monitoring system.

Pavement Condition Indicators

Roughness

The FHWA will use the International Roughness Index (IRI) to evaluate roadway roughness, and has set an upper IRI limit of 240 cm per km (150 inches per mile) for surface roughness.

The IRI was developed at the International Road Roughness Experiment sponsored by the World Bank and several countries, including the United States, in Brazil in 1982. It is designed to provide a common quantitative basis with which to reference the different measures of roughness. It summarizes the longitudinal surface profile in the wheel track and simulates the response of one wheel of a typical passenger car traveling 80 km per hour (50 miles per hour) to road roughness.

The IRI upper limit of 240 cm per km, selected by the FHWA, is based on consideration of research efforts that relate actual roadways with a known IRI with the public's perception of ride quality. A recent study [1] conducted for the FHWA indicated that objectively developed IRI numbers could be mathematically correlated with subjectively developed pavement serviceability ratings [2] (PSR) generated by panels of road users. This work included mathematical formulas that allow conversions between IRI readings and anticipated road user evaluation of pavement performance (*i.e.*, PSR).

Conversion formulas [3] indicate that an IRI of 240 cm per km correlates to a PSR range of between 3.0 and 3.5, which is slightly greater than the 2.5 to 3.0 PSR range associated with terminal serviceability for Interstate highway pavements.[4]

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[1] Bashar Al-Omari and Michael I. Darter, "Relationships between IRI and PSR: A Report of the Findings of Pavement Model Enhancements for the Highway Performance Monitoring System (HPMS)," Transportation Engineering Series No. 69, University of Illinois at Urbana Champaign, Report No. UILU–ENG–92–2013, September 1992. This document is available for inspection in FHWA Docket No. 93–10.

[2] The PSR concept was developed at the 1956 American Association of State highway Officials (AASHO) road test to relate the pavement serviceability index (PSI), computed from objectively measured pavement distress, with subjective serviceability ratings by panels of road users.

[3] Includes conversion formulas developed inhouse by the State of Maine, for the South Carolina pavement management system by PMS Inc. and the previously mentioned Al-Omari and Darter research cited in footnote No. 1.

[4] The "AASHTO Guide for Design of Pavement Structures", AASHTO, 1986 (page I–8) defines terminal serviceability index as the lowest acceptable level before resurfacing or reconstruction becomes necessary for the particular class of highway. The AASHTO Guide goes on to note that

Continued

Rutting

The FHWA has established 15 mm (5/8 inch) as the upper allowable limit of rutting.

The American Association of State Highway and Transportation Officials (AASHTO) Highway Subcommittee on Construction surveyed State highway agencies in 1988 on rutting. The survey revealed that for State maintained roads, 1/2 inch rutting would initiate rehabilitation in about 35 percent of the States. An additional 35 percent of the States indicated that 5/8 inch of rutting would initiate rehabilitation. The "Highway Pavement Distress Identification Manual" (HPDIM)[5] classifies 1/2 to 1 inch of rutting as moderate severity.

The FHWA 15 mm (5/8 inch) criterion is consistent with the performance levels expected on the Interstate System.

Faulting

The FHWA has established two levels of faulting criteria that are related to pavement type. The FHWA has established an upper limit on faulting of 3 mm (1/8 inch) on jointed plain concrete pavements (JPCP), and an upper limit on faulting of 6 mm (1/4 inch) on jointed reinforced concrete pavements (JRCP).

Generally, State highway agencies consider faulting to be objectionable in the 1/8 to 1/2 inch range. The HPDIM classifies faulting between 1/16 and 1/5 inch as moderate severity. The "Pavement and Shoulder Maintenance Performance Guides," August 1984, FHWA publication number TS–84–208, indicates faulting should be repaired at 1/4 inch. A copy of TS–84–208 is available for inspection in FHWA Docket No. 93–10.

The FHWA selected a lower level of faulting for JPCP than for JRCP because JPCP joints occur more frequently. The levels selected are consistent with the higher expectation the traveling public associates with Interstate highways.

Pavement Data

Procedures for developing IRI are currently well defined in the guidance provided in the "Highway Performance Monitoring System (HPMS) Field Manual," Appendix J "Roughness Equipment, Calibration and Data Collection." This document is widely available in planning sections of State highway agencies and the FHWA division offices and a copy of this publication is available for inspection in FHWA Docket No. 93–10. IRI data are collected annually and reported to the FHWA under the HPMS program.

The FHWA pavement policy, (23 CFR part 626) requires each State to have an operational pavement management system (PMS) for principal arterials (which includes the Interstate system) in place by January 13, 1993.

The FHWA envisions that the States will assemble necessary pavement surface roughness, rutting, and faulting information from data currently available in the States' PMS database(s) and from information reported in HPMS.

The FHWA division offices will work with the States in identifying acceptable procedures for measuring and compiling the data available from the States' PMS. Data supporting each State's IM transfer request will be made available for inspection by the FHWA.

Bridge Condition Indicators

The FHWA will use the current national bridge inventory (NBI) bridge deck condition rating (item 58) and the rating indicating whether the bridge requires load posting (item 70) as indicators of Interstate bridge condition for purposes of evaluating States' requests for IM transfer. The NBI ratings are determined in accordance with the "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges" (Coding Guide) US DOT/FHWA, December 1988. A copy of this publication is available for inspection in FHWA Docket No. 93–10.

Bridge Decks

The FHWA will require that bridge decks have a condition rating (item 58) of 5 or better.

Bridge decks are rated in item 58 on a scale of 0 to 9 with a rating of 9 representing a bridge deck in excellent condition. A Coding Guide deck rating of less than 5 indicates a poor condition with the deck showing deterioration and spalling. In relation to pavement roughness, a deck with a rating less than 5 is considered a rough deck that would not provide a reasonably smooth ride. A deck rating of less than 5 is a long-standing condition rating used to determine a structurally deficient bridge.

Posting

The FHWA will require that NBI item 70, for load posting, must be a rating of 5.

The National Bridge Inspection Standards (23 CFR part 650, subpart C) require the posting of load limits only if the maximum legal load in a State produces stresses in excess of the operating stress levels. The operating stress level will result from the absolute maximum permissible load to which a bridge may be subjected. Coding Guide item 70 of the NBI is the item for bridge posting, and a State's rating of 5 indicates that no posting is required at the operating level.

Load posting of a bridge reduces the level of service of the system of which the bridge is an integral part and can potentially disrupt interstate and intrastate commerce. Heavy vehicles may be required to take long detour routes thereby indirectly adding to the costs the public must bear for goods and services. Load posting of a bridge may also be an indicator of a bridge's superstructure or substructure capacity that may have been affected by continual and long term deterioration of the bridge's elements and which could have been prevented or abated by adequate preventive maintenance.

Policy

For the purpose of 23 U.S.C. 119(f)(1), which provides for transfer of IM funds apportioned to the States, the FHWA will accept a State's certification if the State's Interstate routes meet the following criteria:

Pavement

(1) An IRI of 240 cm per km (150 inches per mile) or less;

(2) Rutting of 15 mm (5/8 inch) or less; and

(3) Faulting of 3 mm (1/8 inch) or less on JPCP and 6 mm (1/4 inch) or less on JRCP.

Bridges

(1) Bridge decks in "fair condition" or better (Coding Guide item 58 rated 5 or better); and

(2) No load posting required (Coding Guide item 70 rated 5).

In the event that the condition, as reflected by current condition data bases, for any segment of Interstate pavement or bridge does not meet the required criteria, the State's request for funding transfer may later be approved only if the State certifies that the deficient segments have been subsequently upgraded to meet the required criteria or that the work necessary to correct any such deficient segments is included in the approved State Transportation Improvement Program, required by 23 U.S.C. 135(f).

Section 119(f)(2) of title 23 U.S.C. allows the States to "unconditionally" transfer up to 20 percent of unobligated

a terminal serviceability index of 2.5 to 3.0 is often suggested for use in the design of major highways. A copy of this publication is available for inspection in FHWA Docket No. 93–10.

[5] The "Highway Pavement Distress Identification Manual", US DOT/FHWA, DOT–FH–11–9175/NCHRP 1–19, March, 1979 reprinted February 1986. This Publication is available for inspection in FHWA Docket No. 93–10.

IM apportioned funds based solely on the request of the States.

Authority: 23 U.S.C. 119 and 315; 49 CFR 1.48(b).

Issued on: February 24, 1993.

E. Dean Carlson,

Executive Director, Federal Highway Administration.

[FR Doc. 93-4809 Filed 3-2-93; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 93-09; Notice 1]

Receipt of Petition for Determination That Nonconforming 1990 Honda VFR 750 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1990 Honda VFR 750 motorcycles are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a determination that a 1990 Honda VFR 750 motorcycle that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is April 2, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

J.K. Motors, Inc. of Kingsville, Maryland ("J.K.") (Registered Importer No. R-90-006) has petitioned NHTSA to determine whether 1990 Honda VFR 750 motorcycles are eligible for importation into the United States. The vehicle that J.K. believes is substantially similar is the 1990 Honda VFR 750 that was manufactured for importation into and sale in the United States and that was certified by its manufacturer, Honda Motor Company Ltd, as complying with all applicable Federal motor vehicle safety standards.

The petitioner stated that it examined the non-U.S. certified 1990 Honda VFR 750, and determined that it is substantially similar to its U.S. certified counterpart. Based on this examination, the petitioner contends that the non-U.S. certified 1990 Honda VFR 750, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the two models are identical with respect to compliance with Standards Nos. 106 Brake Hoses, 108 Lamps, Reflective Devices and Associated Equipment, 111 Rearview Mirrors, 116 Brake Fluid, 119 New Pneumatic Tires for Vehicles other than Passenger Cars, 120 Tire Selection and Rims for Motor Vehicles other than Passenger Cars, 122 Motorcycle Brake Systems, 123 Motorcycles Controls and Displays, and 205 Glazing Materials.

Petitioner also contends that the non-U.S. certified 1990 Honda VFR 750 is capable of being readily modified to meet Standard No. 115 Vehicle Identification Number, by adding a permanent VIN plate to the motorcycle dash.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: April 2, 1993.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 25, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93-4896 Filed 3-2-93; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 93-10; Notice 1]

Receipt of Petition for Determination That Nonconforming 1988 Mercedes-Benz 500SE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1988 Mercedes-Benz 500SE passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1988 Mercedes-Benz 500SE that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was

certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is April 2, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

ICI International Inc. of Orlando, Florida (Registered Importer No. R–90–003) has petitioned NHTSA to determine whether 1988 Mercedes-Benz 500SE (Model ID 126.036) passenger cars are eligible for importation into the United States. The vehicle which ICI believes is substantially similar is the 1988 Mercedes-Benz 300SE (Model ID 126.024). ICI has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1988 Mercedes-Benz 300SE, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that the 500SE is substantially similar to the 300 SE, and "differs mainly in engine size and minor options which go with it." In accounting for the differences between the two vehicles, the petitioner observed that manufacturers such as Daimler Benz A.G. "generally design only a few basic body shell designs which they then equip with a multitude of engine-size and cosmetic or comfort options." The petitioner further surmised that the 500SE's absence from the United States market could be attributed to "salability considerations, or legislative restrictions such as the strict emission control requirements in the United States."

ICI submitted information with its petition intended to demonstrate that the 1988 model 500SE, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1988 model 300SE that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1988 model 500SE is identical to the certified 1988 model 300SE with respect to compliance with Standard Nos. 102 Transmission Shift Lever Sequence * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluid, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials.

Petitioner also contends that the 1988 model 500SE is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 111 Rearview Mirrors: Permanently marking required warning statement on lower edge of the passenger's outside rearview mirror, which is convex.

Standard No. 114 Theft Protection: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch pot nearest the driver.

Standard No. 118 Power-Operated Window Systems: Rewiring of the power window system so that the window transport is inoperative when the ignition is turned off.

Standard No. 206 Door Locks and Door Retention Components: Replacement of the rear door locks and locking buttons with U.S.-model parts.

Standard No. 208 Occupant Crash Protection: Installation of an ignition switch-actuated seat belt warning buzzer. The petitioner claims that the 1988 model 500SE is equipped with an ignition switch-actuated seat belt warning light that displays the seat belt identifying symbol.

Standard No. 214 Side Door Strength: Installation of reinforcing beams.

Standard No. 301 Fuel System Integrity: Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1988 model 500SE must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and

will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 25, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–4895 Filed 3–2–93; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Additional Venue

On February 2, 1993, notice was published at page 6852 of the **Federal Register** (58 FR 6852) by the United States Information Agency pursuant to Public Law 89–259 relating to the exhibit "Scrolls from the Dead Sea: The ancient Library of Qumran and Modern Scholarship." In addition to the venues listed, this exhibit will also be on display at the M. H. de Young Memorial Museum, San Francisco, California, from on or about February 1, 1994, to on or about June 1, 1994. A copy of the list of objects covered by this notice may be obtained by contacting Mr. Paul Manning of the Office of the General Counsel of USIA. The telephone number is 202–619–6827, and the address is room 700, 301 4th Street, SW., Washington, DC 20547.

Dated: February 23, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–4898 Filed 3–2–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 40
Wednesday, March 3, 1993

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).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 1, 8, 15, and 22, 1993.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 1

Tuesday, March 2

3:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Wednesday, March 3

2:00 p.m.
Briefing on Activities of Nuclear Waste Technical Review Board (Public Meeting) (Contact: Seth Coplan, 301-504-1850)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) a. Environmental and Resource Conservation Organization's Appeal of LBP-92-23 (Rancho Seco) (Postponed from February 26) (Tentative) (Contact: Margaret Doane, 301-504-2001)

Friday, March 5

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)

Week of March 8—Tentative

Monday, March 8

10:00 a.m.
Briefing on NRC Financial Management Matters (Public Meeting) (Contact: Ron Scroggins, 301-492-4750)

2:30 p.m.
Discussion of NRC Policy Options Concerning Nuclear Safety Issues in Eastern Europe and Former Soviet Union (Public Meeting) (Contact: Michael Congdon, 301-504-2744)

Tuesday, March 9

10:00 a.m.
Briefing on Activities of the Center for Nuclear Waste Regulatory Analysis (CNWRA) (Public Meeting) (Contact: Malcolm Knapp, 301-504-3324)

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing on Proposed Rulemaking for Preparation and Use of Radiopharmaceuticals (Public Meeting) (Contact: Anthony Tse, 301-492-3797)

Week of March 15—Tentative

Monday, March 15

10:00 a.m.
Discussion on Full Power Operating License for Comanche Peak (Unit 2) (Public Meeting) (Tentative) (Contact: Suzanne Black, 301-504-1318)

11:30 a.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Week of March 22—Tentative

Friday, March 26

10:00 a.m.
Briefing on Progress of NRC Regulatory Review (Public Meeting) (Contact: Frank Gillespie, 301-504-1275)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 4-0 (Commissioner de Planque not present) on February 26, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Internal Management Issues" (Closed—Ex. 2) be held on February 26, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

William M. Hill, Jr.,
SECY Tracking Officer Office of the Secretary.

[FR Doc. 93-4942 Filed 3-1-93; 10:57 am]

BILLING CODE 7590-01-M

federal register

Wednesday
March 3, 1993

Part II

Department of Health and Human Services

Agency for Toxic Substance and Disease Registry

Environmental Data Needed for Public Health Assessments; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–67]

Environmental Data Needed for Public Health Assessments

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of availability of draft guidance document; and request for comments.

SUMMARY: This notice announces the availability of the draft guidance document, Environmental Data Needed for Public Health Assessments, prepared by ATSDR. The public is invited to comment on this guidance document.

DATES: Comments must be received on or before June 30, 1993.

ADDRESSES: Written comments in response to this notice should bear the docket control number ATSDR–67, and should be submitted to: Robert C. Williams, P.E., DEE, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–32, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, ATSDR, telephone number (404) 639–0610.

SUPPLEMENTARY INFORMATION: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604(i)) requires ATSDR to perform public health assessments. The general administrative functions, practices, and procedures that ATSDR uses in conducting public health assessments are included in the regulation "Health Assessment and Health Effects Studies of Hazardous Substances Releases and Facilities," 42 CFR part 90, published at 55 FR 5136, February 13, 1990.

The draft guidance document, Environmental Data Needed for Public Health Assessments, describes the general focus of a public health assessment and provides a list of site information and environmental data that ATSDR attempts to obtain from the Environmental Protection Agency (EPA), the potentially responsible party, or other lead agencies responsible for conducting environmental investigations. It is intended for use by EPA Remedial Project Managers (RPMs), Federal Facility Installation Restoration Program Managers, ATSDR Regional Representatives, and other parties involved in the public health assessment process.

A public health assessment is the evaluation of data and information on the release of hazardous substances into the environment in order to assess any current or future impact on public health, to develop health advisories or other recommendations, and to identify studies or actions needed to evaluate and mitigate or prevent human health effects. The public health assessment evaluates three primary types of information: Environmental data, community health concerns, and health outcome data. This guidance document addresses only environmental data needs.

During analysis of human exposure pathways, environmental data are used to determine how human exposure may have occurred, is occurring, or may occur. An exposure pathway consists of five elements:

1. Source (landfill, spill, etc.);
2. Transport media (groundwater, air, etc.);
3. Exposure point (drinking water well, food source, shower, etc.);
4. Route of exposure (ingestion, inhalation, etc.); and
5. Receptor population (families, school children, etc.).

During preparation of a public health assessment, ATSDR must evaluate specific data that address pathways, especially at potential exposure points. This guidance document describes specific data that are crucial for determining human exposure to hazardous substances and evaluating related health effects. The availability of this information early in the remediation process would contribute to the timely identification of needed public health actions. This document has been prepared to make other organizations aware of the environmental data needed by ATSDR.

Dated: February 24, 1993.

Walter R. Dowdle,

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Appendix—Environmental Data Needed for Public Health Assessments

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Introduction

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, directs the Agency for Toxic Substances and Disease Registry (ATSDR) to perform specific public health activities in response to actual or potential exposure to toxic substances released into the environment. Although that mandate covers a wide range of health-related activities, this document focuses on the specific requirement that ATSDR conduct a public health assessment of each site on, or proposed for inclusion on, the National Priorities List (NPL).

This document describes the general purpose and focus of a public health assessment and provides a list of general site information and environmental data that ATSDR attempts to obtain from the Environmental Protection Agency (EPA), the potentially responsible party, or other lead agencies responsible for conducting environmental investigations. It is intended for use by EPA Remedial Project Managers (RPMs), Federal Facility Installation Restoration Program Managers, ATSDR Regional Representatives, and other parties involved in the public health assessment process.

A public health assessment is the evaluation of data and information on the release of hazardous substances into the environment in order to assess any current or future impact on public health, to develop health advisories or other recommendations, and to identify studies or actions needed to evaluate and mitigate or prevent human health effects. The public health assessment evaluates three primary types of information: environmental data, community health concerns, and health outcome data. This document addresses only environmental data needs.

During analysis of human exposure pathways, environmental data are used to determine how human exposure may have occurred, is occurring, or may occur. An exposure pathway consists of five elements:

1. Source (landfill, spill, etc.);
2. Transport media (groundwater, air, etc.);
3. Exposure point (drinking water well, food source, shower, etc.);

4. Route of exposure (ingestion, inhalation, etc.); and

5. Receptor population (families, school children, etc.).

During preparation of a public health assessment, ATSDR must evaluate specific data that address pathways, especially at potential exposure points. Much of that needed information is available in reports of remedial investigations (RIs) and other environmental studies conducted by EPA, Federal facilities, and state agencies. Other environmental information critical to exposure pathway analysis, such as contaminant concentrations at off-site human exposure points, is not as likely to be available at the beginning of the RI process. The following sections describe specific data that are crucial for determining human exposure to hazardous substances and evaluating related health effects. The availability of this information early in the remediation process would contribute to the timely identification of needed public health actions.

Data Quality Information

To determine the likelihood of human exposure, health assessors evaluate all available environmental data. Environmental data are collected by different organizations for very different purposes; such data often are not of the necessary quality nor intended for use in public health assessments. Therefore, the following information should accompany data sent to ATSDR.

Data quality objectives (DQOs)—the anticipated use for which samples were taken, which then determines the types of laboratory analysis used and resulting data quality.

Quality assurance/quality control (QA/QC) requirements—the criteria by which data accuracy and precision are judged.

When formulating DQOs for sampling and analysis of contaminated media at human exposure points (water supply wells, playground soils, etc.), the level of QA/QC should not be less than that used for risk assessment data (Levels III to V), as specified in the EPA OSWER Directive 9355.0–7B, March 1987, entitled Data Quality Objectives for Remedial Response Activities Development Process. This document is available from the U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, 401 M Street, SW., Washington, DC 20460.

The ATSDR data evaluation process is discussed in detail in Appendix C of the ATSDR Public Health Assessment Guidance Manual, March 1992 (reference **Federal Register**, 57 FR 21987, May 26, 1992).

Electronic Data Transfer

Currently, health assessors receive most information from EPA and other organizations in written reports, e.g., remedial investigation/feasibility studies (RI/FSs) and data sheets, with accompanying maps, figures, and tables. A few sites are making their environmental databases available to ATSDR in machine-readable formats or through communication linkages. An interagency workgroup, including representatives from EPA, Army, Air Force, Department of Energy, ATSDR, and U.S. Geological Survey, is attempting to develop a standard format for transferring electronic data between agencies. Site-specific data transfer is ongoing, and additional demonstration transfers should take place in early Fiscal Year 1993.

Electronic transfer of data, and use of database query and analysis techniques, should speed review and analysis of environmental data. For some large sites, however, so much information is being collected and interpreted that review and analysis of the written reports are not adequate. As a result, some type of automated analytical technique is required. Electronic transfer greatly speeds the review and analysis process by eliminating the need for duplicative data entry and verification. Also, data in an electronic format can be imported to a Geographic Information System (GIS) so that disparate, geographically based information, such as contaminant distributions, census data, and land uses, can be integrated and interpreted. ATSDR supports the use of electronic reporting methods and is actively pursuing their use during preparation of public health assessments.

General Information Needs

ATSDR needs the following general background information and analytical data for each site it evaluates.

Site Identifiers

- Site name and alias.
- Site address or location.
- Site type (e.g., mine tailings, landfill, surface impoundment, spills, etc.).
- EPA technical contact's name and phone number (e.g., Remedial Project Manager, On-Scene Coordinator, etc.).
- Descriptions of problems/concerns.
- Current owner's name.

Site History

- Dates of operation and significant events (e.g., fires, changes in ownership or products, etc.).
- Descriptions of previous releases, and actions taken by EPA or the facility to remedy them.
- NPL listing document, i.e., why was the site listed on the NPL.
- Descriptions of physical barriers to prevent pollutant transport (e.g., liners, slurry walls, fences, dikes).
- Current CERCLA/RCRA status of site.
- Current structural condition of containers, vessels, and buildings holding substances.

Geographic and Demographic Data

- Plotting of the site on the USGS quadrangle map, including the scale and map name if the complete map is not furnished.
- Political geography, i.e., city/town, county, state.
- Distance from site to closest residence.
- Approximate population residing within 1 mile of site, or within the potentially affected area, whichever is greater.
- Sensitive land uses and features within 1 mile of the site or within the potentially affected area (e.g., schools, day care facilities, hospitals, retirement homes, streams, rivers, wetlands, aquifer recharge zones, water wells, etc.).
- Copies of photographs or databases that depict past or current site conditions, including aerial photographs, satellite imagery, and GIS coverages (databases).

Relationship to Nearby Community

- On-site activities and the estimated number of people involved in each activity (e.g., working, dirt-biking, camping, hunting, fishing, etc.).
- Copy of the community relations plan.
- Types of barriers or signs used to prevent public access.
- Estimated frequency of on-site activities.
- Number and types of other potential environmental contamination sources within 1 mile of the site (or within the potentially affected area) including RCRA-type operating industrial facilities and other NPL or CERCLIS sites.

Substances identified

- List of chemical names and Chemical Abstract System (CAS) numbers (if known).
- Estimate of the quantities of contaminants released to each medium

(soil, air, surface water, and groundwater).

• Maximum concentration, range, and extent of contamination in each medium (including biota).

• Identification of waste materials and quantities.

• Documentation of any chemical, mechanical, meteorologic, or other phenomena that might rapidly alter the current physical state of the chemicals present or the general condition of the site (e.g., earthquake zone, flood plain, etc.).

Analytical Information

• All analytical results for each sample taken, in addition to documents that summarize data. Raw data may be requested under certain circumstances.

• Detection limits for all analytical data.

• Descriptions of the level of QA/QC used, and of QA/QC results and data validation reports.

• Analyses of total concentrations, not only RCRA extraction analyses concentrations.

• Analyses that identify which form of a chemical is present if toxicity of the agent's various forms is significantly different (e.g., chromium III and chromium VI, elemental mercury and methylated mercury, etc.).

Soil Exposure Pathway

Contaminated soils may expose individuals who live, play, or work near the site to multiple contaminants at levels of health concern. Ingestion of contaminated surface soil, particularly by children, is a primary concern. Inhalation of contaminated dusts and direct dermal contact with contaminated soils also can lead to adverse health effects. Generally, the public is exposed to only the top few inches of soil; therefore, ATSDR has defined surface soil as the top 3 inches. For its evaluation, ATSDR needs concentrations of contaminants found in surface soil reported separately from those found in subsurface soil. Because ATSDR considers past, current, and future exposure scenarios, the Agency needs to know the concentrations of contaminants in the soil before and after removal or remedial actions. Following is information relevant to ATSDR's evaluation of the soil pathway.

• Exact sample locations, including descriptions and map locations, and the purpose of the sampling.

• Depth of sampling points: specify if sample is a vertical composite of soil between specified depth ranges (e.g., 0–3 inches, 3–12 inches, 1–3 feet).

• Type of sample (e.g., grab or composite).

• Sampling scheme for composite samples (e.g., composite of five grab samples from a 100 square foot grid, etc.).

• Constituents analyzed for, analytical methods used, detection limits, and concentrations detected.

• Date of sampling.

• Discrete samples (grab) as well as composite samples because composited samples may not be representative of the maximum contaminant concentration to which individuals are exposed.

• Type of soil (sandy, silty, clayey, etc.).

• Description of vegetative cover.

• Land use or special features.

Surface Water Exposure Pathway

Representative sampling of surface water upgradient and downgradient of the site is necessary to distinguish health implications associated with the site. All surface water bodies on or impacted by the site should be sampled, including ditches, gulleys, and perennial and intermittent streams that could transport contaminants away from the site. Samples should be taken in areas where there is potential for human exposure. The following data are needed for evaluation of the surface water pathway.

• Indication on map of 100-year flood plain.

• Locations of all downstream surface water intakes for a distance of potential impact from the site.

• Identification and descriptions of National Pollution Discharge Elimination System (NPDES) effluents from the site, and sources upstream and downstream of the site at distances potentially affecting the surrounding community. Copies of NPDES permits and compliance reports may also be requested.

• Use classification of the surface water bodies.

• Past, current, and future uses of surface water on site and downstream (e.g., recreational, agricultural, drinking water, livestock watering, etc.).

• Hydrologic characteristics.

• Relationship of surface water to groundwater.

• Copies of surface water sampling record and log.

• pH and specific contaminant concentrations.

• Sampling and analytical methods used, detection limits, QA/QC data, and concentrations detected.

Sediment Exposure Pathway

Residents may be exposed to contaminated sediment either through direct contact, ingestion, and inhalation, or through a secondary pathway—ingestion of contaminated biota. Sediment sampling is needed at possible human exposure points such as recreational areas or children's play areas and where contaminated sediment may enter the food chain such as known fishing and hunting areas, if there is the possibility of uptake of contaminated sediments by wildlife, fish, or shellfish that later may be eaten by people.

Sediments may also be mechanically disturbed and transported to possible human exposure points by dredging. Therefore, sampling and analysis of the dredged sediments, as well as the stream channels and impoundments, may be needed at some sites.

Contaminated sediments are not always found in constantly wet drainage areas. Many drainage ditches, surface impoundments, and ephemeral streams associated with releases of hazardous waste are dry part of the year. To prevent confusion between "soil" and "sediment," ATSDR defines sediment to be any solid material, other than waste material or waste sludge, that lies below a water surface; that has been naturally deposited in a waterway, water body, channel, ditch, wetland, or swale; or that lies on a bank, beach, or floodway land where solids are deposited.

The following information is relevant to ATSDR's analysis of the sediment pathway.

• Descriptions and locations on map of samples obtained.

• Depths of sampling points: specify if sample is a composite of soil between specified depth ranges (e.g., 0–3 inches, 3–12 inches, 1–3 feet, etc.).

• Type of sample (e.g., grab or composite).

• Sampling scheme for composite samples (e.g., composite of five grab samples from a 100-foot length of stream, whether the sampling program was designed to collect samples at regular intervals or from depositional areas, etc.).

• Constituents analyzed for, analytical methods used, detection limits, QA/QC data, and concentrations detected.

• Date of sampling event and site conditions at that time.

Groundwater Exposure Pathway

Human exposure to contaminated groundwater from water supply wells is a common public health problem associated with hazardous waste sites. To prevent or mitigate such exposure, the location and use of potentially contaminated wells or springs should be identified as soon as possible after discovery of the hazardous waste problem. Characterization of the vertical

and lateral extent of the groundwater contamination plume is also needed to evaluate the groundwater exposure pathway, but only as it relates to past, present, and future contaminant movement to human exposure points.

Groundwater pathways analysis and public health recommendations can be enhanced by the following approaches to groundwater monitoring.

• Correlation of groundwater contaminants measured in site monitoring wells to contaminants measured in water supply wells can be greatly improved if some of the site monitoring wells are screened in the same groundwater zone as the water supply wells.

• Because of the heterogenous nature of groundwater systems, water supply wells and springs within or at the leading fringe of a groundwater contamination plume usually need more than a one-time sampling to be evaluated for possible human exposure. Quarterly monitoring for a least one year is preferred.

• Valid comparisons between analyses of metals from groundwater samples and EPA drinking water standards can only be made if the groundwater samples are NOT FILTERED during sampling; EPA drinking water standards and health studies are based on UNFILTERED samples.

Following are several types of information needed for the groundwater exposure pathway analysis.

• Well survey and inventory within at least 1 mile of the site, or within the potentially affected area, whichever is greater:

■ An inventory of a larger area downgradient of any known groundwater plumes may be required, depending on site-specific hydrogeology and the extent of contamination.

■ The well inventory should include the number, depth (including screen interval), and location of all local wells and developed springs.

• Water sources designated by the following categories:

■ Monitoring wells.

■ Facility water supply wells.

■ Municipal/utility wells or springs.

■ Residential wells or springs or small, unregulated water systems.

■ Commercial/industrial production wells.

■ Irrigation wells (including lawn-watering systems).

■ Community wells, such as wells serving mobile home parks.

■ Piezometers.

■ Livestock water wells/springs.

• Descriptions of site-specific and regional hydrogeology, including these characteristics:

■ Depth, thickness, extent, name, and characteristics (including flow direction) of all groundwater zones and aquifers affected or potentially affected by contaminants.

■ Depth, thickness, extent, name, and characteristics (including flow directions) of all local drinking-water aquifers.

■ Vertical and lateral extent of groundwater contamination.

■ Natural geochemistry (may be the same as background) of all contaminated groundwater zones and drinking water aquifers.

• Descriptions of past and current groundwater monitoring, including the following information:

■ Dates and frequency of past and current monitoring.

■ List of analytes.

■ Sampling procedures.

■ Water level measurement procedures.

■ Dates of and procedures used for aquifer tests.

• Analytical results of groundwater monitoring, including the following information:

■ For each sample, field measurements for temperature, conductivity, and pH.

■ Tables of analytical results listed by sample location.

■ Any available summaries of analytical results in which the maximum concentrations of contaminants are identified.

■ QA/QC analyses for different sampling episodes.

■ Analytical results of metal contaminants derived from unfiltered groundwater samples.

■ Water level measurements, calculated gradients, potentiometric contour maps, and figures.

■ Monitoring well construction logs, boring logs, and site-specific, cross-sectional maps.

■ Descriptions of past, current, or planned groundwater remedial actions, including provision of alternative water supplies.

■ Descriptions and results of any geophysical, geochemical (including tracer studies), or soilgas surveys performed for the purpose of defining sources and extent of groundwater contamination.

■ Descriptions and locations of all known or surmised facility- or site-related sources of groundwater contamination. Non-site-related sources may also be included if pertinent to contamination of water supply wells or springs.

■ Descriptions and locations of any on-site or near-site groundwater/surface water recharge/discharge areas, such as sinkholes, sinking or disappearing streams, streambank or drainage ditch seeps, leachate seeps, or undeveloped springs.

Air Exposure Pathway

Adverse health effects (acute and chronic) associated with inhalation of air contaminants is a common concern of citizens living and working near hazardous waste sites. Air emissions from past or current production processes, as well as volatilization of organic compounds, airborne particulates, and acid gases from hazardous waste areas, may expose residents who live or work near the site to contaminants at levels of health concern.

Hazardous waste areas from which air releases may be significant are surface impoundments, where there may be leaking drums or tanks containing volatile organic compounds; landfills that produce methane gas, which can migrate; waste piles of materials that may be easily entrained by winds or that contain volatile organic contaminants; and contaminated soils that may become entrained in the air by winds or vehicular traffic. Air emissions may also be generated by certain remedial technologies such as excavation, landfarming or bioremediation, air stripping, pond aeration, incinerator stack emissions and ash, or during handling of decontaminated soil.

Air releases from past and/or current production processes may cause off-site deposition of contaminants that may lead to soil, biota, and surface water contamination, which in turn may result in the population near the site having secondary exposure. Therefore, site characterization should include an evaluation of production area air releases, meteorologic data, and, possibly, modeling of those releases to determine potential off-site air exposure points and deposition areas that may need to be sampled. The following information is relevant to the air pathway.

Ambient Air Data

• Locations where samples were taken, including descriptions and illustrations on maps.

• Meteorologic conditions, temperature, wind speed, and wind direction when samples were taken (i.e., which samples were upwind, and which were downwind?).

• Descriptions of activities in the area during sampling that may have contributed to concentrations of constituents detected (e.g., 10 feet from busy intersection, 20 feet downwind

constituents detected (e.g., 10 feet from busy intersection, 20 feet downwind from bulldozers excavating contaminated soil, etc.).

• Documentation that samples were taken in the breathing zone (4–5 feet above ground).

• Descriptions of sampling methods used and constituents collected by each method (personal monitors, fixed monitoring stations, Tenax® tubes, total particulate or PM10, Drager® tubes, OVA®, HNU®, etc.).

• Sampling frequency and dates (duration of continuous or integrated composite sampling, grab samples, etc.).

• Constituents analyzed for, analytical methods used, detection limits, QA/QC, and concentrations detected.

• Ambient air sampling where people may be exposed at on- and off-site locations, if fugitive air emissions are the only source of potential human air exposure and on-site or fence-line sampling indicates contaminants are present at levels that could potentially cause adverse health effects.

• Ambient air data from the maximum predicted off-site exposure locations to ensure modeling predictions are accurate and to protect public health, if there are current stack emissions from production areas or remedial technologies, and if modeling of those emissions indicates a potential for people off site to be exposed to constituents at levels that may cause health effects.

• It is recommended that ambient air samples be taken even if modeling does not indicate a potential for off-site exposure, if there is community concern about site emissions.

Stack Emissions Data

• Detailed descriptions of the treatment technology or manufacturing process associated with each stack, including design drawings, raw feed materials, operating temperatures and conditions, products and byproducts of the system, any air pollution control equipment, etc.

• All permits (state and Federal, Clean Air Act [CAA], polychlorinated biphenyls [PCB], and hazardous waste [RCRA]), if permitted under those programs, or, if a CERCLA unit, all documents relevant to the unit's design and operating requirements.

• All compliance reports required under any of the previously described permits and any other documents that discuss past planned and unplanned air releases.

• All stack testing or trial burn results for the units (including testing or trial burn plans, sampling, analytical, and QA/QC reports, and any written reviews of the data).

• Identification of the closest meteorologic station and general meteorologic conditions (including wind rose, prevalence of air stagnation events, or other unusual conditions for that area), and a determination that the information is representative of the meteorologic conditions at the site and surrounding areas.

• Any air modeling for the stack(s) and/or fugitive emissions at the site (including all parameters used in the modeling, such as land use, terrain features, nearby building dimensions, meteorologic conditions used or dates and source of meteorologic data used in the modeling, flue gas temperature and velocity, stack height, contaminant emission rate, etc.).

Soil Gas Data

• Analytical results from any soil gas surveys and a description of the sample locations and survey methods.

• Measurements of flammable and explosive gases, such as methane or ethylbenzene, at landfills and other waste source areas where such gases may be generated, migrate, or accumulate.

• Descriptions of calibration gases and concentrations are needed in addition to the instrument readings of a combustible gas meter or other instrument calibrated to determine concentrations at or above the lower explosive limit of gases under investigation.

• Gas pressure measurements to estimate how far soil gas contaminants may migrate from their source to human exposure points, such as an occupied residence.

• Permanent gas monitoring wells should be equipped with a permanent pressure gauge that should be read before sampling. Vertical and lateral zones of soil gas movement can best be determined when gas monitoring wells are screened in the most likely subsurface zone of movement and not over the entire depth of the unsaturated zone.

• Investigation of buried utility lines that lie beneath or adjacent to the hazardous waste area to determine if they serve as preferential pathways for soil gas movement from the source area into occupied buildings.

Indoor Air Quality Data

• Indoor air sampling data.

■ Indoor air sampling data may be needed to determine potential health effects on building occupants (workers and/or residents), if on-site buildings that are occupied (or may be occupied by people in the future) are constructed of contaminated materials, or the buildings became contaminated during use.

■ Indoor air sampling may also be needed if gases or volatile organic compounds are known to be migrating through the soil, or if soil gas measurements around the building indicate that gases may accumulate in the building. If flammable or explosive atmospheres are possible, instruments capable of detecting flammable and explosive gases at and above the lower explosive limit should be used.

• Type of instruments and sample collection methods used (include air volume sampled).

• Analytical data and analytical methods used, including detection limits for all contaminants, calibration of equipment, and QA/QC procedures and results.

• Date, time, and temperature when samples were taken.

• Diagram of building showing sampling locations.

• Descriptions of building construction materials and significant construction features (on concrete slab, basement, number of stories, below grade, on stilts, etc.).

• Descriptions of sampling locations including type of room (bedroom, den, garage, basement, attic, process, or storage area, etc.), height in the room, and distances from significant structures in the room, such as ceilings, hoods, vents, workbenches, chemical storage or use areas, doors or other large openings, etc.

• Descriptions of building air flow before and during the sampling (e.g., was the building unoccupied and closed with no air circulation? Was central heating or air conditioning operating for sufficient time to reach equilibrium in air quality?).

• Descriptions of other contaminants that may be present in the air because of normal building use (especially important for residential sampling), such as chemicals or solvents used for hobbies, freshly painted surfaces, cleaners, lawn care products, etc.

• Aggressive air sampling of buildings that are/may be contaminated with metals, particulates, or fibers.

■ ATSDR recommends such sampling be performed because it is difficult to interpret surface wipe sampling data for health purposes.

■ Aggressive air sampling should be conducted when buildings are not occupied, with the indoor air constantly "stirred up" to simulate worst case conditions. Contaminants may be in homes as a result of contaminated soil being tracked in, contaminated clothing

being brought home from work, or air deposition through open windows, vents, etc.

Food-Chain Exposure Pathway

Human populations may be exposed to site contaminants by eating plants or animals that have incorporated the contaminants into their bodies. Both on- and off-site hunting, fishing, foraging, and farming activities may bring people into contact with those contaminants. Some substances, particularly fat-soluble substances and heavy metals, may reach concentrations in animal tissues that are thousands of times higher than those found in water, soil, and sediment. For discussion in the public health assessment, it is important that the edible portions of such food items be analyzed for contaminants of concern. It is impossible to draw meaningful human food-safety conclusions when the whole body of a fish is analyzed, rather than fillet samples, or when a whole plant is analyzed and only the fruits are normally ingested, etc.

When planning and designing an investigation of food-chain contamination, it is important to have a well-designed biota sampling protocol, with sample size large enough to be statistically significant (more than 20 samples per location per sampling episode are recommended when parametric statistical methods will be used). In particular, organisms of different species, ages, or reproductive status should not be sampled without strong justification. For example, when assessing the impact of contaminated sediment upon the edible fish populations in a stream, results of analyses of tissues from bottom-feeding fish should not be combined with those from water-column feeders; because of their different feeding habits, very different effects may be expected. Discrete ("grab") samples are preferred because ATSDR tries to determine the maximum contamination in order to model worst-case scenarios.

Special handling of biologic samples needs to be considered. Some analytical procedures require that live or fresh-frozen fish be transported to the lab immediately for analysis; the accuracy of other procedures may not be affected if formalin-preserved specimens or those held frozen for weeks or months are used. Such considerations, along with any special problems encountered, should be included in an appendix to the document for quality assurance review.

When contamination of consumable plants and/or animals is suspected, the following data are needed by ATSDR to evaluate the food-chain pathway.

• Non-sampling information (past/present).

■ Animal and plant species that may be eaten by people if these species are potentially affected by the site (e.g., annual animal population or crop volume harvested).

■ Descriptions of populations consuming each potentially contaminated crop and animal (e.g., residential gardens containing tomatoes, corn, and peas consumed by owners [include ethnicity, if known]; local subsistence hunting for rabbits, dove, and deer; commercial and subsistence fishing for salmon and catfish; commercial beef cattle ranches and feedlots in the area; etc.).

■ Descriptions of past, present, and intended future land use.

• If contamination exists on site:

■ Sampling and analysis of edible plants and on-site edible animal species.

■ Sampling and analysis of off-site edible animal species likely to pass through the contaminated area.

• If contamination exists off site:

■ Sampling and analysis of all plant and animal species believed to be exposed to contaminated media, if they are potentially used as human food sources.

• When biota studies are performed:

■ A copy of the protocol used, including how each species was harvested; how representative samples were selected; what portions were sampled and analyzed; special specimen-handling procedures; contaminants analyzed for; methods used and their detection limits, etc.

■ All analytical results and reports, including any QA/QC data and reports, and a list of samples and their label identification.

■ A sample size of at least 20 individuals per species, per episode, is desirable.

■ Analysis of edible portions only.

■ Analysis of individual ("grab") rather than composite samples.

■ A control population of at least 20 individuals from a comparable uncontaminated location, for background levels.

Identification of Physical Hazards

Public health assessments include evaluations of site hazards that may endanger human populations that live or work on or near the site. Physical hazards at hazardous waste sites are often overlooked during initial site documentation and remediation activities. The absence of an adequate barrier between the site hazards and the community often is the single most important factor in determining whether members of the community are likely to access the site and risk physical injury. A gate or fence that can easily be climbed through or over is not considered an adequate barrier to curious children. On-site workers are issued appropriate personal protective equipment and made aware of the hazards on site; community members are not.

The following data are needed for identification and evaluation of physical hazards.

• Descriptions and locations of physical barriers that would prevent access to on-site physical hazards.

• Descriptions and locations of on-site and perimeter warning signs that would warn trespassers of dangerous conditions.

• Descriptions of all existing potential physical hazards at the site. Examples of physical hazards include:

■ Confined spaces, especially underground areas (danger of entrapment and accumulation of toxic or suffocating gases).

■ Industrial equipment (danger of falls from such equipment, or unsecured equipment falling onto individuals).

■ Explosive or hazardous vapors, especially soil gases.

■ Explosive, shock-sensitive, air- or water-reactive, or incompatible materials stored on site.

■ Electrocution hazards, such as exposed wires and unsecured fuse boxes.

■ Structurally unsafe or deteriorating structures because of poor repair or weather damage.

■ Open pits or vats containing chemicals or water.

■ Sink holes or soil erosion.

■ Stored materials (danger of collapse because of deteriorating packaging).

■ Leachate (may be strongly acidic or caustic, causing chemical burns).

■ Cables, chains, wires, ropes (danger of entanglement, breaking under loads).

Radiologic Parameters and Samples

Interpretation of radiologic samples can be quite difficult if certain important information is not included in the data package. In some cases, improper calibration standards might be used, resulting in erroneous readings. In many cases, it is unclear if the readings are gross (including background) or net. Efficiencies of the actual monitoring probes can vary; probes can be specific for certain types of radiation. Those and other factors must be clarified for ATSDR to evaluate the information.

ATSDR needs the following information for review of radiologic data.

• The types of instruments used (e.g., solid state, ionization, scintillation) and the manufacturer and model number for each type of detector and probe.

• Calibration information such as the radioisotope used (e.g., Cs/Ra/Co), date of last calibration, and the instrument efficiency for each radioisotope.

• Detection limits for each radioisotope, including length of time the sample was counted, the statistical error, total counts, and/or counts per minute.

• For laboratory instruments, the average background value, and how often the background was determined.

• For multi-channel analyzers, specification of channels and whether a standard was run before and/or following the analysis.

• Field measurements, including the following elements:

■ Probe location (e.g., distance from the surface or surface contact).

■ Background reading, what instrument was used, and where the background data were collected.

■ Results with a notation identifying gross or net readings.

■ The proper units (e.g., cpm converted to dose rate or to exposure rate).

• Smears results.

These are indicative of the mobility of radioactive materials from surfaces. The results should include the area covered by smears (e.g., 100 cm^2) and what type of laboratory instrument (GeLi, HPGe, α/β etc.) was used to analyze the samples.

• Air sample reports.

These should include a description of the sampler; the height above ground of the sampling system; volumetric flow through the filter; sample time; and area, pore size, and type of filter used (charcoal, AgI, etc.). See Air Exposure Pathway section for additional information needs.

• Soil sample reports.

These should include information about the area represented by the sample (grid size) and sampling depths. The number of samples collected should be stated, and, if the results are composite samples, how many individual samples comprised the composite before sample counting. See Soil Exposure and Sediment Exposure Pathways sections for additional information needs.

• Water sample reports.

These should include information on whether the sample was filtered before counting and how the samples were prepared (e.g., ashed, coprecipitated and radioisotope percent recovery, or distilled, etc.). Information on the type of EPA method used to analyze the water sample is also needed. See Surface Water Exposure and Groundwater Exposure Pathways sections for additional information needs.

• Radon level determinations.

These should state what type of detector was used (e.g., charcoal canisters, alpha track, etc.). If indoor measurements were taken, was the house or building vacant, sealed, or inhabited? What time of year was the sample collected, and what were the indoor and outdoor temperatures during the collection period? How long was the detector in the structure? Was the laboratory that performed the monitoring approved by the EPA radon program?

Summary

ATSDR must depend on other agencies or corporate potentially responsible parties to generate the environmental data necessary to determine public exposure to toxic chemicals at hazardous waste sites. Most of the environmental information that ATSDR needs is the same as that routinely required by EPA at NPL/hazardous waste sites. ATSDR typically requires additional information in the following categories:

• Contaminant concentrations in all off-site media to which the public may be exposed;

• An appropriate detection limit and level of QA/QC in samples to ensure the resulting data are adequate for assessing possible human exposures;

• Discrete samples that reflect the potential range of exposure of the public;

• Surface soil samples not deeper than 3 inches;

• More extensive biota studies, and analyses of edible portions only;

• More ambient and indoor air sampling; and

• Lists of physical hazards and barriers to site access.

This document is intended to provide general guidance that will help persons responsible for designing hazardous waste site characterizations include the data that ATSDR needs to develop a public health assessment of the site. It is recommended that, when possible, ATSDR review draft workplans for each NPL site to provide site-specific guidance on data that will be needed to address site-related public health issues that may arise.

[FR Doc. 93–4839 Filed 3–2–93; 8:45 am]

BILLING CODE 4160–70–P

federal register

Wednesday
March 3, 1993

Part III

Department of Education

Library Research and Demonstration: Online and Dial-In Access to a Statewide Multitype Library Database Demonstration Project; Notice Inviting Applications

DEPARTMENT OF EDUCATION

[CFDA No.: 84.039]

Library Research and Demonstration: Online and Dial-In Access to a Statewide Multitype Library Database Demonstration Project; Notice Inviting Applications for a New Award for Fiscal Year (FY) 1993

Purpose of Program: The Library Research and Demonstration Program provides grants to institutions of higher education and other public or private agencies, institutions, and organizations for research and demonstration programs related to the improvement of libraries, including the promotion of economical and efficient delivery of information, cooperative efforts, developmental projects, education in library and information science, and dissemination of information derived from such projects. The competition announced in this notice is for demonstration of online and dial-in access to a statewide, multitype library bibliographic database through a statewide fiber optic network.

Eligible Applicants: Institutions of higher education that meet the definition of eligibility under the terms of 20 U.S.C. 1141 (a) and other public or private agencies, institutions, and organizations.

Deadline for Transmittal of Applications: May 28, 1993.

Deadline for Intergovernmental Review: July 29, 1993.

Applications Available: March 17, 1993.

Available Funds: $2.480 million.

Estimated Average Size of Awards: $2.480 million.

Estimated Number of Awards: One.

Project Period: Up to 15 months.

Budget Period: October 1, 1993 to December 30, 1994.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86; and (b) the regulations for this program in 34 CFR part 777.

Priority: Under 34 CFR 75.105(c)(3) and the fiscal year 1993 appropriations act (Pub. L. 102–394), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Demonstration of online and dial-in access to a statewide, multitype library bibliographic database through a statewide fiber optic network housing a point of presence in every county, connecting library services in every municipality.

Supplementary Information: Public Law 102–394, enacted October 6, 1992, provides FY 1993 appropriations for federally assisted library programs. That legislation specifies that, of the total funds appropriated for federally assisted library programs, $2,480,000 shall be used to address the priority as stated above.

Any institution of higher education that wishes to apply for funds under one of the programs authorized by title II of the Higher Education Act (HEA) (20 U.S.C. 1021 *et seq.*) must be an eligible institution under the terms of 20 U.S.C. 1141(a). If you wish to apply to the Department of Education for a determination of institutional eligibility, you may contact: Ms. Lois Moore, U.S. Department of Education, Office of Postsecondary Education, Debt Collection and Management Assistance Service, Division of Eligibility and Certification, 400 Maryland Avenue, SW., room 3522, Washington, DC 20202–5323.

For Applications or Information Contact: Neal Kaske or Louise V. Sutherland, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m. Eastern time.

Program Authority: 20 U.S.C. 1033.

Dated: February 25, 1993.

Emerson J. Elliott,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 93–4852 Filed 3–2–93; 8:45 am]

BILLING CODE 4000–01–U

federal register

Wednesday
March 3, 1993

Part IV

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 173, 178, and 180
Cargo Tanks; Miscellaneous Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 173, 178, and 180

[Docket No. 183C; Notice No. 93-7]

RIN 2137-AC37

Cargo Tanks; Miscellaneous Requirements

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM) and announcement of public meeting.

SUMMARY: RSPA proposes to amend certain requirements on the manufacture, qualification and maintenance of cargo tank motor vehicles. The proposed changes are based on petitions for rulemaking, exemptions, and National Transportation Safety Board recommendations. In addition, in response to certain petitions, this notice announces a public meeting to discuss certain technical areas on specification cargo tank motor vehicles. The intended effect of these actions is to relax certain regulatory requirements and to reduce unnecessary economic burdens on industry where there will be no adverse effect on safety.

DATES: *Written comments:* Comments must be received on or before June 15, 1993.

Public meeting: A public meeting will be held on March 24 and 25, 1993. It will begin at 2 p.m. on March 24, 1993.

ADDRESSES: *Written comments* should be submitted to the Dockets Unit (DHM-30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

The *public meeting* will be held in the Federal Aviation Administration Building, 2300 East Devon Avenue, room 166-170, Des Plaines, Illinois, 60018.

FOR FURTHER INFORMATION CONTACT: Ronald Kirkpatrick, telephone (202) 366-4545, Office of Hazardous Materials Technology, or Jennifer Karim, (202) 366-4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

A. Background:

Most of the issues raised in this NPRM relate to requirements that were adopted in final rules published under Dockets Nos. HM-183/HM-183A (June 12, 1989, 54 FR 24982; May 22, 1990, 55 FR 21035; September 7, 1990, 55 FR 37028; June 17, 1991, 56 FR 27872). The final rules established three new cargo tank specifications designated as DOT 406, DOT 407 and DOT 412. Manufacture of cargo tanks to these new specifications was authorized beginning on December 31, 1990.

RSPA received several petitions for rulemaking requesting amendment to certain requirements relating to the new DOT 400 series cargo tank motor vehicles in part 178, and to the operation and maintenance requirements in parts 173 and 180. All petitions have been given full consideration. RSPA proposes to grant certain petitions that would reduce unnecessary and burdensome regulations and result in positive benefits to industry. Additionally, these proposals would reduce costs for industry without reducing the level of public safety.

B. Summary of Petitions.

The Cargo Tank Manufacturing Association (CTMA) petitioned (P-1125) DOT to suspend, review and rewrite the Hazardous Materials Regulations (HMR) on cargo tank motor vehicles. Certain issues raised by CTMA and several other petitioners also were raised in rulemaking proceedings and were fully addressed during the rulemakings published under HM-183/183A and in public meetings. The petitioners requested that RSPA reverse its position on earlier requests that had been denied. Some petitioners also made certain other requests that were not practical, were not within RSPA's purview under the Hazardous Materials Transportation Act (HMTA), or if granted, would adversely affect safety. Some of the requests made by the petitioners are as follows:

CTMA recommendation that DOT organize a joint government/industry task force to develop acceptable solutions to correct serious defects in HM-183. RSPA believes the scheduled public meeting will address issues that must be resolved to ensure the smooth implementation of the new regulations. A public meeting will provide a broader forum for open discussion, allow a more rapid resolution of problems identified by petitioners, and facilitate quicker implementation of regulatory changes than an advisory committee or joint task force. A record containing a summary of the key issues discussed at the meeting will be placed in the Public Docket.

CTMA request that DOT review and consider the over 1,000 petitions received by DOT regarding HM-183 requirements. During the development of the regulations published under Dockets HM-183/183A, DOT evaluated all outstanding petitions for rulemaking and considered all petitions for reconsideration. RSPA received nearly 1,100 petitions for reconsideration. Approximately 900 of these petitions were from the propane gas industry concerning a misunderstanding of a provision that applies to liquid hazardous materials and not to gases; RSPA addressed these petitions in the May 22, 1990 **Federal Register** publication (55 FR 21035). About another 100 petitions were from the petroleum industry concerning the retention of petroleum products in external piping and hoses. These petitions from the petroleum industry and the other remaining petitions within the scope of the rulemaking were addressed in the September 7, 1990 **Federal Register** publication (55 FR 37028). RSPA accepted certain requests that were outside the scope of the rulemaking as petitions for rulemaking. This NPRM addresses most of those requested changes.

CTMA request that DOT require all cargo tanks operating at 15 psi and above to be ASME certified and stamped. This issue was fully considered in the development of the regulations published under Dockets HM-183/183A. RSPA originally proposed that all new specification cargo tank motor vehicles must be constructed and certified in accordance with the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code). In responding to the merits of comments from interested persons, RSPA revised the proposal in the final rule. Except for vacuum-loaded cargo tank motor vehicles, only those DOT 407 cargo tank motor vehicles with a maximum allowable working pressure (MAWP) greater than 35 psig and DOT 412 cargo tank motor vehicles with an MAWP greater than 15 psig are required to be constructed and certified in accordance with the ASME Code. RSPA provided for all DOT 406 cargo tanks, for all DOT 407 cargo tanks with an MAWP of 35 psig or less and for all DOT 412 cargo tanks with an MAWP of 15 psig or less

to be constructed, but not certified, to the ASME Code largely because of manufacturers' use of "stuffed head" configurations and noncylindrical designs. By accepting these variations, RSPA provided for the continued use, based on their proven safety record, of design configurations and construction practices used in producing MC 306 and MC 307 cargo tanks for many years. For additional discussion, refer to the heading "Application of the ASME Code to Low Pressure Cargo Tanks," in the June 12, 1989 **Federal Register** publication (54 FR 24983).

CTMA request that DOT determine actual forces, by test or modeling, that effect accident damage protection devices, roll-over, rear bumpers, etc., including the structural integrity of the tank and develop design procedures that are appropriate, as recommended by National Transportation Safety Board (NTSB) and industry. In response to a recommendation from the NTSB, Federal Highway Administration (FHWA) and RSPA are evaluating the area of rollover protection devices. Based upon the results of the analysis, RSPA will take appropriate action.

CTMA recommendation that DOT develop venting and relief requirements that conform with good engineering practices. CTMA provided no data that demonstrates the venting and pressure relief requirements for DOT 400 series specification cargo tank motor vehicles do not meet good engineering practices. These requirements were given full consideration in the rulemaking process. In addition, two companies advertised that they currently make pressure relief devices fully conforming to the prescribed requirements.

CTMA recommendation to eliminate the requirement for self-closing systems on hazardous waste tanks that handle liquid and semi-solid hazardous waste containing suspended solids. This issue was fully considered during the rulemaking proceeding. RSPA based the requirements contained in the HMR on petitions for reconsideration and comments received during several HM-183/183A public meetings. Before adoption of the final rule under HM-183/183A, the HMR required that product discharge openings on MC 306 and MC 307 cargo tanks and bottom outlet openings on MC 312 cargo tanks be equipped with internal self-closing valves (§§ 178.341-5(a), 178.342-5(a) and 178.343-5(a)). The valve seat had to be located inside the tank or within the welded flange, its companion flange, nozzle, or coupling. The valves also had to be protected by a shear section or suitable guards. The vast majority of vacuum-loaded cargo tank motor vehicles operated under DOT exemptions. Those exemptions required outlets to be equipped with self-closing valves. Under HM-183/183A final rules (June 12, 1989, 54 FR 24982; May 22, 1990, 55 FR 21035; September 7, 1990, 55 FR 37028; June 17, 1991, 56 FR 27872) the requirements for self-closing systems were applied consistently across the board. The self-closing valve is needed as a safety feature to ensure that the discharge valve closes in an emergency situation such as a fire, where the operator may not be able to reach the valve. Vacuum-loaded waste tanks were included because waste haulers often do not know the exact composition of the waste being transported and the final rule did not limit the use of these cargo tanks to hazardous wastes. RSPA repeatedly stated in working meetings, and in written clarifications of the new requirements, that the self-closing systems are needed only during emergencies (hose ruptures, fires, etc.) and that the system may be designed for manual operation under normal conditions but must be self-closing in an emergency.

CTMA recommendation that DOT implement an effective enforcement program as recommended by NTSB and industry. FHWA holds delegated authority for enforcement matters regarding cargo tank motor vehicles. FHWA expanded its cargo tank enforcement program as a result of the new cargo tank requirements. The Office of Motor Carrier Field Operations established a National Cargo Tank Manufacturer, Assembler, and Repair/Inspection Facility Program to enhance compliance. Although FHWA recently focused much attention on motor carriers operating cargo tanks, now it plans to increase compliance monitoring of cargo tank manufacturers.

C. Public Meeting

Items open for discussion at the public meeting include the following:

1. Application of the ASME Code to DOT 400 series specification cargo tank motor vehicles.

a. The feasibility of citing all sections of the ASME Code that must be met in construction of DOT specification cargo tank motor vehicles as opposed to citing only those sections that do not apply.

b. The development of a consensus standard containing procedures for quality control, welding and design as an alternative to the procedures contained in the ASME Code.

2. The progress of the industry on development and testing of dual function vents, reclosing pressure relief devices capable of reseating with the loss of less than one-gallon of lading, and self-closing systems for vacuum-loaded waste tanks.

3. The regulatory proposals contained in this notice

D. Section-by-Section Review

The following is a section-by-section summary of the proposed changes:

Section 173.225

Paragraph (e)(2) would be revised to authorize the use of MC 307 and DOT 407 cargo tank motor vehicles for organic peroxides. This proposed change is based on the satisfactory experience of MC 307 cargo tanks operating under exemption (e.g., E 6610, E 8396, E 8710, E 8932) and a recent revision to the HMR, under a separate rulemaking action [57 FR 45446, October 1, 1992], authorizing use of the DOT 412 cargo tank, which is equal in integrity to the MC 307 cargo tank, for organic peroxides.

Section 173.315

The table in paragraph (a) would be revised to correct an error. For the entry "Nitrous oxide, refrigerated liquid" in Column 4, the ditto notation "do" would be removed and replaced with "DOT-51, MC-330, MC-331". This revision is necessary to eliminate reference to the preceding entry containing Note 23. Note 23 applies to cargo tanks used to transport poisonous by inhalation materials. Nitrous oxide does not meet this criteria.

Paragraph (o)(1) prescribes requirements for piping, hose, or other devices used for loading or unloading cargo tank motor vehicles in chlorine service. The Chlorine Institute petitioned (P-1062) RSPA to remove a restriction that no hose, piping, or tubing used for loading or unloading may be mounted or carried on the motor vehicle. The Chlorine Institute stated that a private carrier often is more experienced and qualified than the consignee to select, handle, test and maintain the high-pressure hoses for chlorine. RSPA agrees with the commenter's request and proposes to revise § 173.315(o)(1) to allow hose, piping, or other tubing to be carried on the vehicle. However, the hose, piping or tubing must be capped to prevent the entry of moisture.

Paragraph (o)(2) requires that each angle valve on a cargo tank used in chlorine service be leak tested once every five loadings or once a week, whichever occurs first. The Chlorine Institute petitioned (P-1062) RSPA to remove the requirement on the basis that it is unnecessary. The Chlorine Institute further stated that identical

angle valves are used on chlorine tank cars and there has never been a requirement to retest these valves. RSPA agrees that the experience record on the use of angle valves on tank cars is satisfactory. Accordingly, RSPA proposes to require that angle valves must be tested once every two years, to coincide with the periodic retest schedule for chlorine tanks specified in § 180.407(c). A separate requirement for testing of angle valves and gasketed joints before installation is retained.

Section 178.337–1

Paragraph (a)(3) contains references to § 173.33(i) and § 173.315(a) Table Note 11. The reference to § 173.33(i) would be corrected to read § 178.337–1(e)(2) and reference to Note 11 of the § 173.315(a) Table would be removed. Paragraph (e)(1) prescribes that each tank required to be insulated must conform with the use and performance requirements contained in § 173.315(a) Table, Note 11. This note 11 is intended for refrigerated gases. Among its requirements is the use of insulated cargo tanks with a design service temperature of minus 100 °F., or no warmer than the boiling point at one atmosphere of the hazardous material to be transported therein, whichever is colder. However, recent changes to the § 172.101 Hazardous Materials Table require that bulk packagings used to transport any compressed gas meeting the poisonous by inhalation criteria for Hazard Zones A, B and C must meet the requirements of special provision B14. This provision requires each tank to be insulated. Thus, even if transported at ambient temperatures, any gas meeting the poisonous by inhalation criteria must be in insulated cargo tanks with a design service temperature of at least minus 100 °F. This was not RSPA's intent. To correct this oversight, RSPA proposes to remove the reference to "Note 11" in § 178.337–1(e)(*1*). Therefore, Note 11 would be applicable only when specified for a particular entry in the § 173.315(a) Table.

Paragraph (e)(2) prescribes that cargo tanks used in chlorine service must have insulation of corkboard or polyurethane foam. The Chlorine Institute petitioned (P–1062) RSPA to authorize the use of a ceramic fiber/fiberglass insulation, as currently allowed for tank cars in chlorine service. The Chlorine Institute pointed out that based on a study, initiated by the Chlorine Institute in 1982, the thermal protection system can protect chlorine cargo tanks below the 483 °F chlorine/iron reaction temperature experienced in a pool fire, for at least 100 minutes. RSPA agrees that the experience record for the use of this insulation on chlorine tank cars is satisfactory and that it is suitable for cargo tanks. RSPA proposes to revise § 178.337–1(e)(2) to authorize the use of ceramic fiber/fiberglass insulation.

Section 178.337–9

Paragraph (b)(7)(i) would be revised to remove a restriction that hose, piping, or tubing used for loading or unloading may not be mounted or carried on a cargo tank. See earlier preamble discussion to § 173.315 in this NPRM.

Section 178.337–11

RSPA proposes to implement a recommendation made by the National Transportation Safety Board (NTSB) in connection with an accident involving release of a toxic lading from an MC 331 cargo tank during an unloading operation. NTSB concluded that the release occurred due to the failure of a fitting on the output side of the cargo tank discharge pump. The only method of stopping the flow of lading was to close the internal shut-off valve, but the valve control was located in the same equipment cabinet as the leaking transfer pump. The NTSB recommended (H–90–91) that controls for internal shut-off valves for the discharge system be installed at remote locations on DOT specification cargo tanks that are used for the transportation of any hazardous material. This proposed change would be contained in paragraph (a)(2) for new construction.

Section 178.338–9

When more than one cargo tank is made to the "same design," § 178.338–9(c) requires that only one cargo tank must be subjected to a full holding time test at the time of manufacture. Each subsequent cargo tank made to the same design may be performance tested during its first trip. A petitioner requested (P–1004) that RSPA also allow verification of the holding time on the first trip for subsequent cargo tanks constructed with a minor change in the length of the tank from the original design. RSPA agrees that certain minor variations are acceptable for cargo tanks constructed to the same design taking into account the safety factor included in the holding time criteria. Therefore, RSPA proposes to remove the definition of "same design" in § 178.338–9(c)(2) and to add a reference to the definition of "same design" contained in § 178.320. The definition, contained in § 178.320, provides for minor design variations and applies to all DOT specification cargo tanks, including MC 338 cargo tanks. Therefore, this change will eliminate an inconsistency.

Section 178.338–11

Paragraph (c) contains requirements for each liquid filling and liquid discharge line on a cargo tank intended for service transporting a flammable lading. Based on an NTSB recommendation [H–90–91], paragraph (c) would be revised to make these provisions applicable to all newly constructed DOT specification MC 338 cargo tanks.

Section 178.345–1

Paragraph (i)(2) requires that any void space within connecting structures joining multiple cargo tanks in a cargo tank motor vehicle must be vented to the atmosphere using a drain of at least 1 inch inside diameter. The Truck Trailer Manufacturers Association (TTMA) petitioned (P–1135) RSPA to remove the restriction on the size of the drain opening. TTMA stated that the length of the void space can vary depending on whether bulkhead dishes are nested or opposed, and submitted a sketch of a design in which the longitudinal distance between nested bulkheads is only one-fourth inch. RSPA agrees that the size of this drain hole should be determined in light of cargo tank design details and by functional requirements.

Paragraph (i)(2) also requires that inspection openings be provided in the connecting structure to permit inspection of interior surfaces. TTMA (P–1135) and another petitioner (P–1134) stated that it is difficult to perform an adequate visual inspection of surfaces inside this void. TTMA said that an inspector would have to enter this void space in order to perform a visual inspection. Therefore, the bulkheads would have to be 18-inches apart to permit installation of a manhole assembly. Finally, TTMA stated that head-to-shell welds always are on the lading side of the bulkheads; thus, inspecting the void would serve no useful purpose. TTMA provided no technical information to substantiate its claim that these areas are corrosion free. As the result of an investigation of a major accident involving an MC 312 cargo tank, the NTSB concluded that the cause of the tank's failure was severe corrosion in the void space between the shell and hat-shaped ring stiffeners; material thickness was found to have been reduced by 50 percent in the area of the failure. The space was provided with a drain hole of 0.375-inch diameter. The NTSB recommended [H–83–29] that RSPA prohibit design configurations that create air cavities adjacent to external cargo tank sheet material and to eliminate exceptions

based on provisions for venting and draining. A related recommendation [H-83-30] called for periodic external visual inspection of surfaces obscured by appurtenances, structural members, etc.; these provisions have been incorporated in §§ 180.405 and 180.407. However, the void between double bulkheads presents the same conditions as closed-section ring stiffeners, and thus it is important to provide a means of inspecting interior surfaces, particularly the shell in the vicinity of the bottom centerline of the tank.

For these reasons, RSPA solicits information on suitable dimensional controls for these drains, how often these areas are inspected, the conditions revealed during such inspections, and the availability of equipment for inspecting these areas.

Section 178.345-3

Paragraph (c)(3), which deals with longitudinal forces due to acceleration and deceleration, defines the longitudinal force at the key support members as 0.75 times the vertical reaction in the case of decelerative forces, but as 0.75 times the static weight of the entire cargo tank in the case of the accelerative forces. TTMA (P-1124) and another petitioner (P-1134) requested a revision to paragraphs (c)(3) (iv) and (v) to correct the calculations by considering the load at the kingpin or turntable pivot.

Longitudinal forces acting on the cargo tank wall during acceleration and deceleration are applied differently depending upon the configuration of the cargo tank motor vehicle. For example, a truck-mounted cargo tank is supported by the chassis of the truck. Vertical reactions to the static weight of a fully loaded cargo tank motor vehicle occur at the truck suspension assemblies, and the longitudinal forces in acceleration and deceleration are applied at the surface of the road. These forces are transmitted between the truck chassis and the cargo tank through structural supports and anchors; they are broadly distributed through the truck-to-tank support structure. In this configuration, stresses in the cargo tank wall due to axial loads and bending moments generated by longitudinal forces are comparatively low under both acceleration and deceleration, being shared by the chassis of the truck. A conventional semi-trailer cargo tank, however, is supported at the front by the tractor through the upper coupler (fifth wheel) and at the rear by the trailer suspension. These longitudinal forces are concentrated locally at two points and vary according to the direction of the application. All accelerative forces are transmitted from the tractor to the cargo tank motor vehicle through the upper coupler, while decelerative forces are applied both through the horizontal pivot of the upper coupler (fifth wheel) or turntable, and at the trailer suspension assembly, applied at the surface of the road. The distribution of braking loads between the tractor and the trailer must be considered in this configuration. Therefore, RSPA proposes to revise paragraphs (c)(3) (iv) and (v), as suggested by the petitioners. RSPA also proposes to make other minor editorial changes to paragraph (c)(3) and to reconstruct the paragraph for clarity.

Also a petitioner requested that § 178.345-3(c) be revised by adding a sentence as follows: "These calculations may be made using a weld joint efficiency of 1.0 in place of that value found in UW-12 of the ASME Code." The petitioner stated that the use of the joint efficiency values tabulated in UW-12 is required in § 178.345-3(b) for analysis of static stresses of the cargo tank motor vehicle. If these joint efficiency factors were used in calculating stresses due to dynamic and accident induced loads, the petitioner stated that unrealistically high stresses would be obtained for the following reasons: (a) The specified highway dynamic loads are maximum combined loads which probably are not seen in the life of a cargo tank; (b) a four-to-one safety factor already is included in the allowable stress; and (c) the ASME Code does not require the consideration of combined stresses as currently required in § 178.345-3 (c) and (d). As an example, the petitioner stated that applying these joint efficiency factors in calculation of dynamic stresses for a typical aluminum DOT 407 cargo tank would increase weight by 690 pounds, resulting in a cost increase of $1460.00 and a loss of 96 gallons in cargo capacity. Further, the petitioner contends that its successful experience in building more than 30,000 cargo tank motor vehicles over 40 years demonstrates the structural reliability of cargo tanks designed by established industry techniques without using ASME Code weld efficiencies in calculation of dynamic stresses.

RSPA agrees, in part, with the petitioner. Paragraph (a), concerning general requirements and acceptance criteria, states "* * * the maximum calculated design stress at any point in the tank wall may not exceed the maximum allowable stress value prescribed in section VIII of the ASME Code, or 25 percent of the tensile strength of the material used at design conditions." This requirement applies to welds as well as to heads, shell and other members which are designed to carry part of the structural loading of the cargo tank motor vehicle. It is pointed out that paragraph (a)(3) permits the use of alternate tests or analytical methods in place of the procedures described in paragraphs (b), (c) and (d) provided they are accurate and verifiable.

As the petitioner stated, the efficiency values for weld joints addressed in UW-12 are required for stress analysis under static conditions as prescribed in paragraph (b); these efficiencies are not applicable to analyses of dynamic loads and combined static and dynamic loads such as those described in paragraph (c). Therefore, RSPA considers the additional text suggested by the petitioner as unnecessary and it is not included in this proposed rule.

Section 178.345-5

RSPA proposes to include a recommendation made by the NTSB in connection with an accident involving the overturn of an MC 306 cargo tank and a subsequent gasoline fire. NTSB concluded that lading was released through an opening in a manhole cover, "most likely after a liquid-level sensor was dislodged by a dynamic surge of the gasoline cargo." The NTSB recommended [H-91-34] that all fittings and devices mounted on a manhole cover of cargo tanks be required to meet the same performance standard to withstand the static internal fluid pressure as that required for the manhole cover. This proposed change would clarify that manhole assemblies must be tested with all fittings and devices in place. This proposed change would be contained in paragraph (b).

Section 178.345-6

RSPA proposes to make a minor editorial change to the requirements, concerning supports and anchoring requirements. This change would clarify the requirement that design calculations of the support elements must include the stresses described in § 178.345-3(c).

Section 178.345-13

A paragraph heading, "Leakage test." would be added to paragraph (c).

Section 178.345-14

Minor editorial changes would be made to paragraph (d) for clarity.

Section 178.345-15

A petitioner (P-1134) pointed out that § 178.340-10(a)(2) allows cargo tanks not meeting all of the applicable specification requirements to be affixed with a metal certification plate without a compliance date being stamped on the

plate. The petitioner requested that similar provisions be allowed for DOT 400-series cargo tank motor vehicles manufactured with specification shortages. RSPA agrees that similar provisions should be made for DOT 400 series cargo tanks. These requirements are proposed in new paragraph (e).

Section 178.346–1

A petitioner (P–1134) requested that RSPA amend paragraph (d) to grant two additional exceptions from the ASME Code to allow the use of a single full fillet lap joint without plug welds for longitudinal seams with an assigned weld joint efficiency of 0.45 and to waive the requirements contained in paragraph UW–9(d) of the ASME Code. To support the request, the petitioner stated, in part:

Table UW–12 of the ASME Code does not allow single, full, fillet lap joints to be used as longitudinal seams. In addition, UW–9 requires that vessels made up of two or more courses shall have the centers of the welded longitudinal joints of the adjacent courses staggered or separated by at least five times the thickness of the thicker plate. Furthermore, a full radiographic examination of the longitudinal joint 4 inches either side of the circumferential welded intersection is the only provision for an exemption to the staggered requirement in UW9.* * *

Elliptical tanks have low MAWPs, routinely 3.3 psi, and thus have very low circumferential, or hoop stress. The longitudinal joints are stressed at very low levels. Calculating circumferential stresses in oval vessels is complex and requires numerous assumptions with several established techniques that can be used.* * *

Use of the single fillet lap seam allows us to install our baffles and bulk heads with the top 42 inches of the tank open. This technique assures a close fit of the head or baffle flanges to the bottom of the tank. This has been very effective in assuring against intercompartment leaks as the tank ages. Another advantage is our employees spend considerably less time inside the closed up vessel, considered by OSHA as confined space.* * *

The petitioner further stated that its company has been manufacturing aluminum and steel tanks for many years, all having two single fillet lap seams without plug welds. The petitioner has no knowledge of any structural problems experienced with this joint configuration, or with nonstaggered welds.

RSPA has reviewed the information supplied by the petitioner and believes the petitioner's request has merit based on its years of experience with no adverse effect on safety. RSPA proposes to add these exceptions in paragraph (d). However, because this welding procedure is limited to the top of the cargo tank motor vehicle, RSPA proposes similarly to limit the procedure to the top 25 percent of the cargo tank motor vehicle circumference.

Section 178.346–2

A minor editorial change would be made to paragraph (a).

Section 178.346–3

This section provides that DOT 406 cargo tank motor vehicles must conform to the structural integrity requirements contained in § 178.345–3. A petitioner (P–1134) requested an exception from the requirements on allowable compressive stresses. The petitioner stated the following:

Section 178.346–3 on structural integrity should be changed as follows:

The structural integrity of each cargo tank motor vehicle must conform to 178.345–3 except that allowable compressive stresses for cargo tanks having r/t values over 200 may be determined by the following formula, and need not comply with paragraph UG–23(b) of the ASME Code. However, in no case should the calculated compressive stress be greater than 25% of the ultimate strength.

Compressive critical buckling stress

$$S_b = \frac{\left(\frac{\pi}{4}\right)^2 E}{\left[\frac{R_1}{t_s}\right]\left[1 + \frac{\left[\frac{R_1}{t_s}\right]^{\frac{1}{2}}}{35}\right]^2}$$

Where:

The actual compressive stress due to combined bending loads, S_c shall not exceed 0.67 of S_b.

E = modulus of elasticity of material at design temperature.

R_1 = inside radius of shell.

t_s = minimum thickness of shell less corrosion allowance.

S_b = Compressive critical buckling stress.

S_c = compressive stress due to combined bending loads.

The above equation is taken from the Alcoa Structural Handbook. * * * It is based on Euler's formula for cylindrical columns, empirically modified by their experience with curved plates, thin walled tubes, and cylinders. The values obtained from Alcoa's approach are less conservative than ASME but more conservative than other alternatives.

We believe using 67 percent (1.5 factor of safety) of the value given in this formula applied to the dynamic loading is sufficient in view of the fact that high dynamic loads are infrequent and the shells are well reinforced by heads, baffles and longitudinal stiffeners. The use of the Alcoa approach with a 1.5 factor of safety is based upon 40 years of cargo tank building experience.

Allowable compressive stresses in the ASME Code were developed basically for cylindrical vessels, vessels not necessarily reinforced either circumferentially or longitudinally.

DOT 406 cargo tanks have circumferential reinforcements spaced no more than 60" apart longitudinally and have two longitudinal overturn rails which substantially reinforce the top of the cargo tank against critical buckling.

Most DOT 406 cargo tanks will be designed with elliptical or oval cross sections in order to lower the center of gravity of the cargo tank. These sections have large top and bottom shell radii. These large radii result in higher r/t values. These large values for r/t used in ASME calculations reduce allowable compressive stresses to low levels. Over thirty-five years experience with these designs, lead us to believe the approach in ASME VIII, UG–23(b) is unnecessary.

Most of the nation's 50,000, or so, oval aluminum tanks currently in service were designed using the aluminum company formula for allowable compressive stresses. The apparent structural success of these tanks substantiates our argument.

If we cannot get relief from the ASME Code's allowable compressive stresses, a typical DOT 406 cargo tank will weigh 530 pounds more with a resulting loss of 87 gallons of cargo capacity. This means that for every 98 MC 306 cargo tank motor vehicles in service, 99 DOT 406 cargo tank motor vehicles will be required to transport equal amounts of hazardous materials. Therefore, an additional 510 vehicles would be required in the nation's fleet.

This suggested procedure applies only to oval aluminum cargo tank motor vehicles having two full length horizontal overturn rails. However, the petitioner's suggested regulatory text would apply the procedure to all DOT 406 cargo tanks, regardless of material, cross-section, or configuration of the overturn device.

RSPA does not agree that this procedure is applicable to all DOT 406 cargo tanks. However, in an effort to recognize standards that may provide better manufacturing procedures, RSPA solicits comments on the suggested procedure for calculation of compressive stresses.

Section 178.346–10

Paragraph (c)(1) prescribes pressure settings of relief valves on DOT 406 cargo tanks. The opening and closing schedules for primary relief valves on DOT 406 cargo tanks adopted in the June 12, 1989 final rule were revised by RSPA in response to the merits of petitions for reconsideration. Petitioners stated that requiring pressure relief valves to reclose at 90% of set pressure (108% Maximum Allowable Working Pressure (MAWP)) would not allow "a valve seat to lift high enough" to attain the large airflows prescribed in the specification. The commenters recommended that the reclosing requirement be reduced to 75% of set pressure, actually below MAWP. RSPA responded to the petitions for reconsideration in a September 7, 1990 final rule by revising the set pressure from a minimum of 120% MAWP to 125% MAWP, with a minimum of 3.3 psig, and by requiring that reclosing occur at no less than the MAWP.

It was brought to RSPA's attention that these changes effectively reduced the average difference in pressure across the valve during the venting cycle. The difference in pressure between the point at which the valve begins to open (set pressure) and the point at which it is fully open (test pressure) is an important parameter with respect to the rate of flow across the valve opening. For purposes of this discussion, this difference in pressure is called "differential pressure." When plotted, a differential pressure of 1.7 psi is derived at the minimum 2.65 psi MAWP, based on the requirement that the test pressure be no less than 5.0 psig. However, this differential decreases rapidly as the MAWP increases up to the point where 1.5 times MAWP equals 5.0 psig (3.333 psig MAWP); at this point, differential pressure is only 0.834 psi. From that point, the differential pressure rises progressively to 1.0 psi at 4.0 psig MAWP. For low MAWPs, this relationship provides both increased pressure differential and increased assurance of structural integrity. However, the changes in opening and closing schedules for primary pressure relief valves on DOT 406 cargo tanks have an adverse effect on flow ratings of these valves at higher MAWPs.

A petitioner requested changes in the pressure relief valve opening and closing requirements and in the test pressure, stating the changes would enable compliance with all requirements for DOT 406 dual function vents. The petitioner stated that the suggested changes would provide for higher differential pressures over the entire range of MAWP, but the changes proposed also would reduce the differential in the mid-range of MAWP; in this case, the lowest differential would be 1.25 psi at an MAWP of 3.125 psig. Under the petitioner's recommended schedule, the set pressure would be reduced to not less than 120 percent of the MAWP (as opposed to 125 percent) or 3.3 psig, whichever is greater, and the test pressure would be increased to 1.6 times MAWP (as opposed to 1.5 times MAWP). The minimum test pressure of 5.0 psig would remain unchanged.

Additionally, TTMA commented on the difficulty of obtaining adequate flow with the narrow range of "set to test pressure." TTMA recommended changes in both pressure relief valve scheduling and test pressures. The recommended schedule would provide for set pressure to be not less than 110 percent MAWP, thus achieving higher differential pressures at the low end of the MAWP range without eliminating the reduced differential in the mid-range of MAWP. Also, TTMA recommended that manufacturers be allowed to specify test pressures in excess of 1.5 times MAWP.

RSPA agrees with the petitioners that the difference between set pressure and test pressure should be increased for primary pressure relief valves on DOT 406 cargo tanks. Therefore, RSPA is proposing to revise § 178.346–10(c)(1) to permit DOT 406 cargo tanks to have the same set pressure and test pressure as prescribed in § 178.345–10(d)(1), and as prescribed for DOT 407 and 412 cargo tanks, except that the reclosing pressure would remain at "no less than MAWP." In addition, the unintended, non-functional reduction in differential pressure in the mid-range of MAWPs would be eliminated by expressing test pressure simply as 2.4 psi above MAWP, i.e., test pressure would vary from 5.05 psig for an MAWP of 2.65 psig to 6.4 psig for an MAWP of 4.0 psig. This would result in a differential pressure of 1.87 psi at the low end of the MAWP range, progressively diminishing to 1.6 psi at the high end. The small increase in test pressures is in line with the increases requested by petitioners except that it is limited to a maximum of 0.75 above the previous schedule. In view of the improved structural integrity of DOT 406 cargo tanks, no deleterious effects are expected.

Section 178.346–13

Paragraph (b) containing requirements for pressure test would be revised for consistency with the proposed changes to § 178.346–10. Refer to earlier preamble discussion to § 178.346–10.

Paragraph (c)(2) authorizes the use of the Environmental Protection Agency's (EPA) Method 27 "Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test" as an alternative to the leakage test prescribed in § 178.345–13(c)(2), where applicable. RSPA has received numerous questions concerning this leakage test; in particular, the meaning of the phrase "where applicable" has been questioned. The intent of this phrase is to allow the use of this alternative leakage test in geographical locations where the EPA Method 27 vapor-tightness test is mandated. It was intended to relieve the burden of duplicate requirements for cargo tanks subject to this test in those locations where EPA has determined that release of gasoline vapors constitutes a hazard to the environment.

TTMA requested, in petition (P–1115), that the EPA Method 27 test for vapor-tightness be authorized for all DOT 406 cargo tanks without regard to whether they are: (1) Used in gasoline delivery, (2) fitted with vapor collection equipment, or (3) subject to this test under EPA rules. TTMA stated that a manufacturer may not know under what local air pollution requirements the cargo tank may operate. TTMA pointed out that EPA also references use of EPA Method 27 for benzene.

It is RSPA's position that if a manufacturer does not provide vapor collection equipment as part of the completed cargo tank, the manufacturer may not use EPA Method 27 but must perform leak testing in accordance with § 178.345–13(c); i.e., at not less than 80 percent of MAWP. RSPA believes there is merit in extending this alternative test for benzene, but RSPA has received no data to support the use of Method 27 for other than DOT 406 cargo tanks, or for other ladings. Therefore, RSPA proposes to revise paragraph (c)(2) to allow use of EPA Method 27 as an alternative leakage test for DOT 406 specification cargo tanks that are fitted with vapor

collection equipment and are intended for use in gasoline or benzene delivery service only. Additionally, EPA Method 27 would be allowed for these cargo tanks without regard to geographical location.

Section 180.403

This section defines "rebarrelling" to mean replacing more than 50 percent of the combined shell and head material of a cargo tank. TTMA requested that the definition for "rebarrelling" be revised to mean replacement of more than 50 percent and less than 100 percent of the combined shell and head material. TTMA also requested that a new definition for "replacement of barrel" be added to cover the complete replacement of the tank with a newly constructed tank using only new materials. RSPA has included TTMA's suggestions in the proposal. TTMA suggested several other changes to requirements pertaining to the rebarrelling of cargo tanks. These changes are addressed in the preamble discussion to § 180.413.

Section 180.405

In paragraph (f), minor editorial changes would be made in subparagraphs (f)(1)(iii) and (f)(4). In paragraph (g)(2), RSPA proposes to implement the NTSB recommendation [H–91–34] on manhole cover fittings. See earlier preamble discussion for § 178.345–5.

Section 180.407

Paragraph (c) prescribes compliance dates for periodic test and inspection of specification cargo tanks. The Chlorine Institute has requested that MC 330 and MC 331 cargo tanks used in chlorine service be leakage tested every two years, in conjunction with the pressure test, in place of an annual test. Because of the odor of chlorine, a leak in a cargo tank transporting this material would be readily detected. Therefore, RSPA agrees with the Chlorine Institute and proposes to extend the frequency of the leakage test to two years.

Paragraphs (e)(4) and (f)(3) both prescribe that degraded or defective areas of a cargo tank liner must be removed and the tank wall below the defect must be inspected. Therefore, RSPA proposes to remove the duplicative requirement in paragraph (e)(4).

Paragraph (g)(1)(iv), covering the pressure test of specification cargo tanks, would be revised to correct the test pressure prescribed for DOT 406 cargo tank motor vehicles for consistency with the proposed changes to § 178.346–10. Refer to preamble discussion to § 178.346–10.

Paragraph (h)(2) would be revised to permit the use of the EPA Method 27 vapor tightness test on any cargo tank fitted with a vapor recovery system and used in gasoline or benzene service. Refer to preamble discussion to § 178.346–13(c)(2).

Paragraph (i) prescribes that the heads and shell of all unlined cargo tanks used for the transportation of materials corrosive to the tank must be thickness tested. A new paragraph (5) containing a minimum thickness table for steel and aluminum would be added. The values contained in this table are based on the size of sheets and plates authorized for the MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 specifications for manufacture of heads and shells. The nomenclature used to express minimum thicknesses has varied over the years. For example, steel thicknesses generally have been expressed in terms of U.S. Standard Gauge, but in the MC 303 specification, both gauge values and decimal values were shown. Thickness values for aluminum generally have been expressed in decimals, but for the MC 302 specification, both gauge values and decimal values were shown. In other cases, calculation of thickness values were required. For example, for the MC 304 specification, the values for aluminum had to be calculated by multiplying the gauge values listed for mild steel by a factor of 1.44; and in the case of the MC 312 specification, the values for aluminum must be calculated from tabulated gauge values using a formula set forth at § 178.343–2(a)(1).

In this proposed rule, a multiplication factor of 1.44 is used to derive the values for minimum thicknesses of aluminum cargo tanks contained in the proposed table § 180.407(i)(5). The nominal thicknesses in the table range from 19 gauge to ⅜" for steel and 0.078" to 0.540" for aluminum.

Note: Editions of the National Tank Truck Carriers' (NTTC) publication "Cargo Tank Hazardous Material Regulations", prior to 1992, interchanged the minimum thickness tables in the MC 303 specification with that contained in the MC 305 specifications.

Section 180.413

This section provides that any repair, modification, stretching, or rebarrelling must be performed by a cargo tank manufacturer holding an ASME "U" stamp or a repair facility holding a National Board "R" stamp. TTMA objects to a repair facility being allowed to rebarrel 100-percent of a cargo tank. TTMA stated that mounting a cargo tank on a motor vehicle requires the proper attachment to: (1) The upper coupler and undercarriage supporting structure on a frameless cargo tank motor vehicle; or (2) the frame on a cargo tank motor vehicle chassis in accordance with the applicable specification. TTMA further stated that, under the National Board Inspection Code, any alteration involving physical changes must be made by an organization holding an ASME "U" stamp, or by an organization holding a National Board "R" stamp provided the change in design is documented by an organization holding an ASME "U" stamp. TTMA also takes the position that a repair facility should not be allowed to modify or stretch a cargo tank without guidance from a Design Certifying Engineer. TTMA pointed out that § 180.403 defines "modification" or "stretching" as any change to the original design and construction of a cargo tank which affects its structural integrity and that § 180.413(d)(2) requires the person performing the stretching to "have knowledge of the original design concept" and to "assure compliance with the rebuilt cargo tank's structural integrity." Therefore, the same requirements should apply to a person responsible for a modification. TTMA stated essentially the same skills are necessary to modify, stretch, or replace a cargo tank as to design and construct a new cargo tank. Hence, the person should have possession of an ASME "U" stamp or a National Board "R" stamp and authorization and guidance from, and certification by, a Design Certifying Engineer should be required for these activities.

RSPA believes TTMA's request has merit. However, significant changes were made in the National Board Inspection Code, effective July 1, 1992. The National Board revised its inspection code to prohibit the repair, modification, stretching, or rebarrelling of an ASME-stamped cargo tank by a manufacturer who holds an ASME "U" stamp but not a National Board "R" stamp. The National Board informed RSPA that this change was made because the National Board lacks jurisdiction over the quality of work for these activities when performed by manufacturers. Therefore, in view of TTMA's request and the change in the National Board Inspection Code, RSPA proposes to revise this section so that any repair, modification, stretching or rebarrelling of an ASME Code-stamped cargo tank must be performed by a repair facility holding a National Board "R" stamp. The current provisions allowing these activities to be performed on non-ASME-stamped cargo tanks by a

manufacturer holding an ASME "U" stamp or a National Board "R" stamp would be retained.

E. Rulemaking Analyses and Notices

1. Executive Order 12291 and DOT Regulatory Policies and Procedures

This notice of proposed rulemaking has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and: (1) Is determined not to be a major rule under Executive Order 12291; (2) does not require a Regulatory Impact Analysis; and (3) is determined not to be significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979). This proposed rulemaking would not impose additional requirements and, in fact, would provide regulatory and economic relief in some areas. A draft Regulatory Evaluation has been placed in the docket.

2. Executive Order 12612

The proposed rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism").

The Hazardous Materials Transportation Act (49 App. U.S.C. 1801–1819) contains express preemption provisions (49 App. U.S.C. 1811) that preempt a non-Federal requirement if: (1) Compliance with both the non-Federal and the Federal requirement is not possible; (2) the non-Federal requirement creates an obstacle to accomplishment of the Federal law or regulations; or (3) it is preempted under section 105(a)(4), concerning certain covered subjects, or section 105(b), concerning highway routing. Covered subjects include:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of unintentional release in transportation of hazardous material; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials. (49 App. U.S.C. 1804(a)(4) (A) and (B)).

This proposed rule concerns design, manufacturing, repairing, and other requirements for packages represented as qualified for use in the transportation of hazardous materials. If adopted as final, this rule would preempt any State, local, or Indian tribe requirements concerning this subject unless the non-Federal requirements are "substantively the same" (56 FR 20424, May 13, 1992) as the Federal requirement. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

3. Regulatory Flexibility Act

I certify that this proposal would not, if promulgated, have a significant economic impact on a substantial number of small entities. There are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

4. Paperwork Reduction Act

This notice of proposed rulemaking would have no changes to the information collection and recordkeeping requirements contained in the June 12, 1989 final rule, which were approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and assigned control number 2137–0014.

5. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

6. National Environmental Policy Act

RSPA has concluded that this proposal would have no significant impact on the environment and does not require the preparation of an environmental impact statement under the National Environmental Policy Act.

List of Subjects

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicles safety, Packaging and Containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, title 49, chapter I of the Code of Federal Regulations, would be amended as set forth below:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for part 173 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

§ 173.225 [Amended]

2. In § 173.225, in paragraph (e)(2), the phrase "MC 310, MC 311, MC 312, and DOT 412" would be revised to read "MC 307, MC 310, MC 311, MC 312, DOT 407, and DOT 412".

3. In § 173.315, paragraph (o)(1) and the first sentence in paragraph (o)(2) would be revised to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(o) * * *

(1) Any hose, piping, or tubing used for loading or unloading that is mounted or carried on the motor vehicle may not be attached to any valve and must be capped at all ends to prevent the entry of moisture, except at the time of loading or unloading. Except at the time of loading and unloading, the pipe connection of each angle valve must be closed with a screw plug which is chained or otherwise fastened to prevent misplacement.

(2) Each chlorine cargo tank angle valve must be tested to be leak free at not less than 225 psig using dry air or inert gas before installation and thereafter every 2 years when performing the required periodic retest in § 180.407(c) of this subchapter. * * *

* * * * *

§ 173.315 [Amended]

4. In addition, in the table in § 173.315(a), for the entry "Nitrous oxide, refrigerated liquid", in Column 4, the ditto notation "do" is removed and replaced with "DOT–51, MC–330, MC–331.".

PART 178—SPECIFICATIONS FOR PACKAGINGS

5. The authority citation for part 178 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR Part 1.

6. In § 178.337–1, paragraph (e)(2) would be amended by revising the last sentence to read as follows:

§ 178.337–1 General requirements.

* * * * *

(e) * * *

(2) * * * Insulating material used on tanks for chlorine must be corkboard or polyurethane foam, with a minimum thickness of 4 inches, or 2 inches minimum thickness of ceramic fiber of 4 pounds per cubic feet minimum density covered by 2 inches minimum thickness of glass fiber.

* * * * *

§ 178.337–1 [Amended]

7. In addition, in § 178.337–1, the following changes would be made:

a. In paragraph (a)(3), the reference "173.33(i)" would be revised to read "178.337–1(e)(2)" and the reference "173.315(a) Table Note 11" would be revised to read "173.315(a) Table".

b. In paragraph (e)(1), the reference "173.315(a) Table, Note 11" would be revised to read "173.315(a) Table".

§ 178.337–9 [Amended]

8. In § 178.337–9, paragraph (b)(7)(i) would be removed, and paragraphs (b)(7)(ii) and (b)(7)(iii) would be redesignated as paragraphs (b)(7)(i) and (b)(7)(ii), respectively.

§ 178.337–11 [Amended]

9. In paragraph (a)(2) introductory text, in the first sentence, the phrase "a flammable compressed gas" would be revised to read "a compressed gas".

10. In § 178.338–9, paragraph (c)(2) would be revised to read as follows:

§ 178.338–9 Holding time.

* * * * *

(c) * * *

(2) *Same design.* The term "same design" as used in this section means cargo tanks made to the same design type. See § 178.320(a)(3) for definition of "design type".

* * * * *

11. In § 178.338–11, in the introductory text in paragraph (c), the first sentence would be revised to read as follows:

§ 178.338–11 Discharge control devices.

* * * * *

(c) Each liquid filling and liquid discharge line must be provided with a remotely controlled shut-off valve. * * *

* * * * *

12. In § 178.345–1, the first two sentences in paragraph (i)(2) would be revised to read as follows:

§ 178.345–1 General requirements.

* * * * *

(i) * * *

(2) The strength of the connecting structure joining multiple cargo tanks in a cargo tank motor vehicle must meet the structural design requirements in § 178.345–3. Any void within the connecting structure must be vented to the atmosphere and have a drain which must be kept open at all times. * * *

* * * * *

13. In § 178.345–3, paragraphs (c)(3) and (c)(4) would be revised to read as follows:

§ 178.345–3 Structural integrity.

* * * * *

(c) * * *

(3) S_x = The net longitudinal stress generated by the following loading conditions, in psi:

(i) The longitudinal stresses resulting from the MAWP and from the lowest pressure at which the cargo tank may operate, in combination with the bending stress generated by the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(ii) The tensile or compressive stress resulting from longitudinal acceleration or deceleration. In each case, the forces applied must be at least 0.75 times the vertical reaction at each suspension assembly, applied at the road surface, and as transmitted to the cargo tank wall through suspension assembly, the horizontal pivot of the upper coupler (fifth wheel) or turntable, and anchoring and support members, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall. The following loadings must be included:

(A) The axial load generated by a decelerative force;

(B) The bending moment generated by a decelerative force;

(C) The axial load generated by an accelerative force; and

(D) The bending moment generated by an accelerative force; and

(iii) The tensile or compressive stress generated by the bending moment resulting from an upward vertical accelerative force equal to at least 0.75 times the vertical reaction at each suspension assembly, applied at the road surface, and as transmitted to the cargo tank wall through suspension assembly, the horizontal pivot of the upper coupler (fifth wheel) or turntable, and anchoring and support members, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall.

(4) S_s = The following shear stresses that apply, in psi:

(i) The vertical shear stress generated by an upward vertical accelerative force equal to at least 1.7 times the vertical reaction at each suspension assembly, applied at the road surface, and as transmitted to the cargo tank wall through suspension assembly, the horizontal pivot of the upper coupler (fifth wheel) or turntable, and anchoring and support members, as applicable. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall;

(ii) The lateral shear stress generated by a lateral accelerative force equal to at least 0.4 times the vertical reaction at each suspension assembly, applied at the road surface, and as transmitted to the cargo tank wall through the suspension assembly, the horizontal pivot of the upper coupler (fifth wheel) or turntable, and anchoring and support members, as applicable. The vertical reaction must be calculated based on the static weight of a fully loaded cargo tank, all structural elements, equipment and appurtenances supported by the cargo tank wall; and

(iii) The torsional shear stress generated by the same lateral forces as described in paragraph (c)(4)(ii) of this section.

* * * * *

14. In § 178.345–5, paragraph (b) introductory text would be revised to read as follows:

§ 178.345–5 Manhole assemblies.

* * * * *

(b) Each manhole, fill opening and washout assembly must be structurally capable of withstanding, without leakage or permanent deformation that would affect its structural integrity, a static internal fluid pressure of at least 36 psig, or cargo tank test pressure, whichever is greater. All fittings and devices mounted on a manhole cover must withstand the same static internal fluid pressure as that required for the manhole cover. The manhole assembly manufacturer shall verify compliance with this requirement by hydrostatically testing at least one percent (or one manhole closure, whichever is greater) of all manhole closures of each type produced each 3 months, as follows:

* * * * *

§ 178.345–6 [Amended]

15. In § 178.345–6, in paragraphs (a) and (b), the second sentence of each paragraph would be revised to read "The design calculations of the support elements must include the stresses indicated in § 178.345–3(b) and as generated by the loads described in § 178.345–3(c).".

§ 178.345–13 [Amended]

16. In § 178.345–13, a heading would be added to paragraph (c) to read "*Leakage test.*".

§ 178.345–14 [Amended]

17. In § 178.345–14, in paragraph (d), the following changes would be made:

a. The paragraph heading *"Multi-cargo tank cargo tank motor vehicle"* would be revised to read *"Multi-tank cargo tank motor vehicle"*.

b. At the end of the second sentence the phrase "unless all of the cargo tanks are identical" would be revised to read "unless all cargo tanks are made to the same specification".

18. In § 178.345–15, a new paragraph (e) would be added to read as follows:

§ 178.345–15 Certification.

* * * * *

(e) *Specification shortages.* If a cargo tank is manufactured which does not meet all applicable specification requirements, thereby requiring subsequent manufacturing involving the installation of additional components, parts, appurtenances or accessories, the cargo tank manufacturer may affix the name plate and specification plate required by § 178.345–14 (b) and (c), without the original date of certification stamped on the specification plate. The manufacturer shall state the specification requirements not complied with on the manufacturer's certification. When the cargo tank is brought into compliance with the applicable specification, the date of compliance shall be stamped on the specification plate. The Registered Inspector shall issue a Certificate of Compliance stating details of the particular operations performed on the cargo tank, and the date and person (manufacturer, carrier, or repair organization) accomplishing the compliance.

19. In § 178.346–1, a new paragraph (d)(9) would be added to read as follows:

§ 178.346–1 General requirements.

* * * * *

(d) * * *

(9) Single full fillet lap joints without plug welds may be used for longitudinal seams in arc or gas welded joints on the top one-fourth of the cargo tank circumference with an assigned weld joint efficiency of 0.45 without radiographic examination. Additionally, the requirements of paragraph UW–9(d) of the ASME Code do not apply.

§ 178.346–2 [Amended]

20. In § 178.346–2, the paragraph (a) designation is removed and the phrase "DOT 406 cargo tanks" would be revised to read "DOT 406 cargo tank motor vehicles".

21. In § 178.346–10, paragraph (c)(1) would be revised to read as follows:

§ 178.346–10 Pressure relief.

* * * * *

(c) * * *

(1) The setting of pressure relief valves must be in accordance with § 178.345–10(d)(1), except that each primary relief valve must reclose at not less than the maximum allowable working pressure (MAWP) and remain closed at lower pressures.

* * * * *

22. In § 178.346–13, paragraphs (b)(1), (b)(2), and (c)(2) would be revised to read as follows:

§ 178.346–13 Pressure and leakage tests.

* * * * *

(b) * * *

(1) Using the hydrostatic test method, the test pressure must be no less than the cargo tank MAWP plus 2.4 psi.

(2) Using the pneumatic test method, the test pressure must be no less than the cargo tank MAWP plus 2.4 psi, and the inspection pressure must be the cargo tank MAWP.

(c) * * *

(2) The Environmental Protection Agency's "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test," as set forth in 40 CFR part 60, appendix A, is an acceptable alternate leakage test for any cargo tank equipped with a vapor recovery system and intended for use in benzene or gasoline service.

PART 180–CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

23. The authority citation for part 180 would continue to read as follows:

Authority: 49 App. U.S.C. 1803; 49 CFR part 1.

24. In § 180.403, the definition for "Rebarrelling" would be revised and a new definition "Replacement of a barrel" would be added, in the appropriate alphabetical order, to read as follows:

§ 180.403 Definitions.

* * * * *

Rebarrelling means replacing more than 50 percent and less than 100 percent of the combined shell and head material of a cargo tank.

* * * * *

Replacement of a barrel means to replace the existing tank on a motor vehicle chassis with an unused tank (for *tank*, see § 178.345–1(c), § 178.337–1, or § 178.338–1 of this subchapter, as applicable).

* * * * *

25. In § 180.405, paragraph (g)(2) introductory text would be revised to read as follows:

§ 180.405 Qualification of cargo tanks.

* * * * *

(g) * * *

(2) On or before August 31, 1995, each owner of a cargo tank marked or certified before December 31, 1990, authorized for the transportation of a hazardous material, must have the cargo tank equipped with manhole assemblies conforming with § 178.345–5 of this subchapter, except for the dimensional requirements in § 178.345(a) of this subchapter, the hydrostatic testing requirements in § 178.345–5(b) of this subchapter, and the marking requirements in § 178.345–5(e) of this subchapter. All fittings and devices mounted on a manhole cover are part of the manhole assembly and must meet all performance standards required for the manhole cover. A manhole assembly meeting one of the following provisions is considered to be in compliance with this paragraph:

* * * * *

§ 180.405 [Amended]

26. In addition, in § 180.405 the following changes would be made:

a. In paragraph (f)(1)(iii), the phrase "prescribed in § 178.345–3 of the specification" would be revised to read "prescribed in § 178.345–3 of this subchapter or the specification".

b. In paragraph (f)(4) introductory text, the phrase "and an outlet is equipped" would be revised to read "and except that an outlet is equipped".

27. In § 180.407, in the table in paragraph (c), immediately under the subheading "Leakage Test" in the first column, the following entry would be added; paragraph (e)(4) would be removed, and paragraph (e)(5) would be redesignated as paragraph (e)(4); paragraph (h)(2) would be revised; paragraphs (i)(5) through (i)(7) would be redesignated as paragraphs (i)(6) through (i)(8), respectively; and a new paragraph (i)(5) would be added, to read as follows:

§ 180.407 Requirements for test and inspection of specification cargo tanks.

* * * * *

(c) * * *

COMPLIANCE DATES—INSPECTIONS AND RETESTS UNDER § 180.407(c)

Test or inspection (cargo tank specification, configuration, and service)	Date by which first test must be completed (see note 1)	Interval period after first test
[ADD]		
* * * * *	*	*
Leakage Test:		
MC 330 and MC 331 cargo tanks in chlorine service	September 1, 1991	2 years.
* * * * *	*	*

* * * * *

(h) * * *

(2) The Environmental Protection Agency's "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test," as set forth in 40 CFR part 60, appendix A, is an acceptable alternate leakage test for cargo tanks equipped with a vapor recovery system and intended for use in benzene or gasoline service.

* * * * *

(i) * * *

(5) Minimum thicknesses for MC 300, MC 301, MC 302, MC 303, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 cargo tanks are shown in the minimum thickness table below. The values shown for the nominal thicknesses are those prescribed in Tables I and II of the applicable specification for construction of new cargo tanks.

MINIMUM THICKNESS TABLE

Nominal Thickness (gauge or inches)	Steel		Aluminum	
	Nominal decimal equivalent	Minimum thickness (inches)	Nominal thickness (inches)	Minimum thickness (inches)
19	0.0418	0.038	0.078	0.072
18	.0478	.043	.087	.078
17	.0538	.048	.096	.086
16	.0598	.054	.109	.098
15	.0673	.061	.130	.117
14	.0747	.067	.141	.127
13	.0897	.081	.151	.136
12	.1046	.094	.172	.155
11	.1196	.108	.173	.156
10	.1345	.121	.194	.175
9	.1495	.135	.216	.194
8	.1644	.148	.237	.213
3/16	.1875	.169	.270	.243
1/4	.2500	.225	.360	.324
5/16	.3125	.281	.450	.405
3/8	.3750	.338	.540	.486

Note: Based on 90% of nominal U.S. gauges and decimal values from DOT specification tables (values for both steel and aluminum minimums rounded to 3 places).

* * * * *

§ 180.407 [Amended]

28. In addition, in § 180.407, in paragraph (g)(1)(iv), in the table, for the entry "DOT 406", column 2 would be revised to read "No less than the MAWP plus 16.6 kPa (2.4 psig)".

29. Section 180.413 would be revised to read as follows:

§ 180.413 Repair, modification, stretching, or rebarrelling of cargo tanks.

(a) *General.* For purposes of this section only, "stretching" is not considered a "modification" and "rebarrelling" is not considered a "repair." Any repair, modification, stretching, or rebarrelling of a cargo tank must be performed in conformance with the requirements of this section.

(b) *Records.* Each owner of a cargo tank must retain at its principal place of business all records of repair, modification, stretching, or rebarrelling made to each tank during the time the tank is in service and for one year thereafter. Copies of these records must be retained by a motor carrier, who is not the owner of cargo tank, at its principal place of business during the period the tank is in the carrier's service.

(c) *Repair.* (1) Non-ASME Code stamped cargo tanks. Any work involving repair on a MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, or MC 312 cargo tank that is not ASME Code stamped must be performed by:

(i) A cargo tank manufacturer holding a valid ASME Certificate of Authorization for the use of the ASME "U" stamp and registered in accordance with subpart F of part 107 of subchapter B of this chapter; or

(ii) A repair facility holding a valid National Board Certificate of Authorization for the use of the National Board "R" stamp and registered in accordance with subpart F of part 107 of subchapter B of this chapter.

(2) ASME Code stamped cargo tanks. After June 30, 1992 the repair on any ASME stamped cargo tank must be performed by a repair facility holding a valid National Board Certificate of Authorization for the use of the National Board "R" stamp and registered in accordance with subpart F of part 107 of subchapter B of this chapter.

(3) The following provisions apply to cargo tank repairs:

(i) DOT 406, DOT 407, and DOT 412 cargo tanks must be repaired in accordance with the specification requirements in effect at the time of manufacture or at the time of repair;

(ii) MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306 cargo tanks must be repaired in accordance with the original specification or with the DOT

406 specification in effect at the time of repair;

(iii) MC 304 and MC 307 cargo tanks must be repaired in accordance with the original specification or with the DOT 407 specification in effect at the time of repair;

(iv) MC 310, MC 311, and MC 312 cargo tanks must be repaired in accordance with the original specification or with the DOT 412 specification in effect at the time of the repair;

(v) MC 338 cargo tanks must be repaired in accordance with the specification requirements in effect at the time of manufacture or at the time of repair; and

(vi) MC 330 and MC 331 cargo tanks must be repaired in accordance with the repair procedures described in CGA Technical Bulletin TB–2 and the National Board Inspection Code—Provisions for Repair of Pressure Vessels. Each cargo tank having cracks or other defects requiring welded repairs must meet all of the requirements of § 178.337–16 of this subchapter, except that postweld heat treatment after minor weld repairs is not required. When any repair is made of defects revealed by the wet fluorescent magnetic particle inspection, including those by grinding, the affected area of the cargo tank must again be examined by the wet fluorescent magnetic particle method after hydrostatic testing to assure that all defects have been removed.

(4) Prior to any repair work, the cargo tank must be emptied of any hazardous material lading. Cargo tanks containing flammable or toxic lading must be purged.

(5) After June 30, 1992 any repair of a cargo tank involving welding on the shell or head must be certified by a Registered Inspector. Any repair of an ASME Code "U" stamped cargo tank must be in accordance with the National Board Inspection Code.

(6) The suitability of any repair affecting the structural integrity of the cargo tank must be determined by testing as prescribed in § 180.407.

(d) *Maintenance or replacement of piping, valves, hoses or fittings.* In the event of repair, maintenance or replacement, any piping, valve, or fitting must be properly installed in accordance with the provisions of the applicable specification before the cargo tank is returned to hazardous materials service. After maintenance or replacement which does not involve welding on the cargo tank wall, piping, valves and fittings must be leak tested. After repair or replacement of piping, valves or fittings which involves welding on the cargo tank wall, the cargo tank, including the repaired or replaced piping, valve or fitting, must be pressure tested in accordance with the applicable specification. Hoses permanently attached to the cargo tank must be tested either before or after installation.

(e) *Modification, stretching, or rebarrelling.* Modification, stretching or rebarrelling of a cargo tank must conform to the following provisions:

(1) *Non-ASME Code stamped cargo tanks.* (i) Any work involving modification, stretching, or rebarrelling on a MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, or MC 312 cargo tank that is not ASME stamped must be performed by:

(A) A cargo tank manufacturer holding a valid ASME Certificate of Authorization for the use of the ASME "U" stamp and registered in accordance with subpart F of part 107 of subchapter B of this chapter; or

(B) A repair facility holding a valid National Board Certificate of Authorization for the use of the National Board "R" stamp and registered in accordance with subpart F of part 107 of subchapter B of this chapter.

(ii) If the modification, stretching, or rebarrelling will result in a design change, then it must be performed under the direction of a Design Certifying Engineer.

(2) *ASME Code stamped cargo tanks.* After June 30, 1992 the modification, stretching, or rebarrelling on any ASME Code stamped cargo tank must be performed by a repair facility holding a valid National Board Certificate of Authorization for the use of the National Board "R" stamp and registered in accordance with subpart F of part 107 of subchapter B of this chapter. If the modification, stretching, or rebarrelling will result in a design change, then it must be performed under the direction of a Design Certifying Engineer.

(3) All new material and equipment, and equipment affected by the modification, stretching or rebarrelling must conform with requirements of the specification in effect at the time of such work. In addition, the modification, stretching or rebarrelling must be performed such that the cargo tank, as modified, stretched or rebarrelled, meets the applicable structural integrity requirements (§ 178.337–3, § 178.338–3, or § 178.345–3 of this subchapter) of the specification in effect at the time of such work. The work must conform to the requirements of the applicable specification as follows:

(i) For specification MC 300, MC 301, MC 302, MC 303, MC 305 and MC 306 cargo tanks, the provisions of either specification MC 306 or DOT 406 until August 31, 1993 and, thereafter to specification DOT 406 only;

(ii) For specification MC 304 and MC 307 cargo tanks, the provisions of either specification MC 307 or DOT 407 until August 31, 1993 and, thereafter to specification DOT 407 only;

(iii) For specification MC 310, MC 311, and MC 312 cargo tanks, the provisions of either specification MC 312 or DOT 412 until August 31, 1993 and, thereafter to specification DOT 412 only; and

(iv) For specification MC 330 cargo tanks, the provisions of specification MC 331.

(4) The person performing the modification, stretching, or rebarrelling must:

(i) Have knowledge of the original design concept, particularly with respect to structural design analysis, material and welding procedures;

(ii) Assure compliance with the rebuilt cargo tank's structural integrity, venting, and accident damage protection requirements;

(iii) Assure compliance with all applicable Federal Motor Carrier Safety Regulations for any newly installed safety equipment;

(iv) Pressure retest each cargo tank in accordance with applicable specification;

(v) Change the existing specification plate to reflect the cargo tank as modified, stretched, or rebarrelled, attach a supplemental specification plate noting appropriate changes that have been made to the cargo tank, or remove the existing specification plate and attach a new specification plate to the cargo tank; and

(vi) On a variable specification cargo tank, install a supplemental or new variable specification plate.

(5) The design of the modified or stretched cargo tank must be certified by a Design Certifying Engineer registered in accordance with subpart F of part 107 of subchapter B of this chapter. The Design Certifying Engineer must certify that the modified or stretched cargo tank meets the structural integrity requirements of the applicable specification. The person performing the modifying, stretching or rebarrelling and a Registered Inspector must certify that the cargo tank is in accordance with this section and the applicable specification by issuing a supplemental manufacturer's certificate. The registration number of the Registered Inspector must be entered on the certificate. A 100 percent rebarrelled cargo tank must be designed, constructed, and certified in accordance

with a current cargo tank specification in part 178 of this subchapter.

(6) If the mounting of the cargo tank on the cargo tank motor vehicle involves welding on the cargo tank vessel, then the mounting must be performed as follows:

(i) Non-ASME Code stamped cargo tanks. For a non-ASME Code stamped cargo tank—

(A) By a cargo tank manufacturer holding an ASME "U" stamp and registered with DOT and under the direction of a Design Certifying Engineer; or

(B) By a repair facility holding an ASME "U" stamp or a National Board "R" stamp, registered with DOT and under the direction of a Design Certifying Engineer.

(ii) *ASME Code stamped cargo tank.* For an ASME Code stamped cargo tank, by a repair facility holding a National Board "R" stamp, registered with DOT, and under the direction of a Design Certifying Engineer.

(7) If the mounting of a cargo tank on a cargo tank motor vehicle does not involve welding on the cargo tank wall, then the mounting shall be in accordance with the original specification or with the specification in effect at the time of the mounting.

(8) Prior to any modification, stretching, or rebarrelling a cargo tank must be emptied of any hazardous material lading. Cargo tanks containing flammable or toxic lading must be purged.

(9) After June 30, 1992 any modification, stretching, or rebarrelling on the cargo tank involving welding on the shell or head must be certified by a Registered Inspector. Any repair of an ASME Code "U" stamped cargo tank must be in accordance with the National Board Inspection Code.

(10) The suitability of modification, stretching, or rebarrelling affecting the structural integrity of the cargo tank must be determined by testing as prescribed for new manufacture in the applicable specification.

Issued in Washington, DC on February 22, 1993, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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